



राजपत्र, हिमाचल प्रदेश

हिमाचल प्रदेश राज्य शासन द्वारा प्रकाशित

मंगलवार, 23 मई, 2017 / 2 ज्येष्ठ, 1939

हिमाचल प्रदेश सरकार

सैनिक कल्याण विभाग

अधिसूचना

दिनांक, 07 अप्रैल, 2017

संख्या: एस0डब्ल्यू0डी0-सी0(10)-1/2017.—राज्यपाल, हिमाचल प्रदेश, विशेष निधि की प्रशासकीय राज्य प्रबन्ध समिति की 43वीं बैठक के मद संख्या-2 भूतपूर्व सैनिकों/सैनिक विधवाओं के बच्चों को सशस्त्र सेनाओं में अफसर बनने के लिये पुनःस्थापना एवं पुनःनिर्माण विशेष निधि से कोचिंग हेतु प्रदान की जाने वाली

एकमुश्त प्रोत्साहन राशि मुबलिग 1,500/- ₹ से बढ़ाकर 6000/- ₹ करने की स्वीकृति सहर्ष प्रदान करते हैं।

आदेश द्वारा,
(डॉ० ए.जे.वी. प्रसाद),
अतिरिक्त मुख्य सचिव (सैनिक कल्याण)।

सैनिक कल्याण विभाग

अधिसूचना

दिनांक, 24 अप्रैल, 2017

संख्या: एस0डब्ल्यू0डी0(एफ)9-1/2010 (पार्ट-I).—राज्यपाल, हिमाचल प्रदेश, विशेष निधि की प्रशासकीय राज्य प्रबन्ध समिति की 43वीं बैठक के मद संख्या-2 “पूर्व सैनिकों तथा सैनिक विधवाओं के बच्चों के पुनःस्थापना एवं पुनःनिर्माण विशेष निधि से छात्रवृत्ति” प्रदान करने के लिये आय सीमा 1,00,000/- ₹ से बढ़ाकर 3,00,000/- ₹ तथा मद संख्या-4 के अनुसार छात्रवृत्ति दरों में बढ़ौतरी तत्काल प्रभाव से निम्नानुसार लागू करने की स्वीकृति सहर्ष प्रदान करते हैं :—

क	स्नातकोत्तर	₹ 500/- प्रतिमास
ख	पोलीटेक्निक तथा कृषि विश्वविद्यालय	₹ 500/- प्रतिमास
ग	डॉक्टरी, इंजीनियरिंग तथा आयुर्वेदिक जैसे व्यवसायिक कॉलेज	₹ 1000/- प्रतिमास
घ	बी.एड, जेबीटी, ड्रैसर डिस्पेंसर, एल0टी0ओ0टी0, आर्ट्स सामान्य स्वास्थ्य सेवायें, पटवार कोर्स, वैटनरी स्टॉप कोर्स व अन्य	₹ 500/- प्रतिमास
ङ	सेवानिवृत्ति के पश्चात् के उपरोक्त कोर्सों/प्रशिक्षणों को छोड़कर अन्य प्रतिमास कोर्स केवल भूतपूर्व सैनिकों के लिए।	₹ 500/- प्रतिमास
च	आई. टी. आई./आई. आर. डी. आई. कोर्स प्रतिमास	₹ 500/- प्रतिमास
छ	अपंग भूतपूर्व सैनिकों को क्वीन मैरी तकनीकी स्कूल पुणे में पुनःस्थापना प्रतिमास प्रशिक्षण हेतु।	₹ 2000/- प्रतिमास

आदेश द्वारा,
(डॉ० ए.जे.वी. प्रसाद),
अतिरिक्त मुख्य सचिव (सैनिक कल्याण)।

सैनिक कल्याण विभाग

अधिसूचना

दिनांक, 24 अप्रैल, 2017

संख्या: एस0डब्ल्यू0डी0(ए)4-3/2007—इस विभाग की अधिसूचना संख्या: जी.ए.डी.ई.(ए) 4-3/2007 दिनांक 13-05-2008 के क्रम को जारी रखते हुये राज्यपाल, हिमाचल प्रदेश, विशेष निधि की प्रशासकीय राज्य प्रबन्ध समिति की 43वीं बैठक के मद संख्या-1 भूतपूर्व सैनिकों तथा सैनिक विधवाओं व आश्रितों को पुनःस्थापना एवं पुनःनिर्माण विशेष निधि से दी जानी वाली आर्थिक सहायता राशि में बढ़ौतरी निम्न मापदण्डों के अनुसार तत्काल से लागू करने की सहर्ष स्वीकृति प्रदान करते हैं :—

क्रम संख्या	आर्थिक सहायता प्रदान करने हेतु मापदण्ड	राशि
1.	भूतपूर्व सैनिक/सैनिक विधवाएं जिन्हें किसी भी प्रकार की पेंशन नहीं मिलती और केवल बुढ़ापा पेंशन से ही जीवन बसर करना पड़ता है	₹ 10,000/-
2.	ऐसे भूतपूर्व सैनिक/सैनिक विधवाएं जोकि गम्भीर रोग से पीड़ित हों को चिकित्सा व्यय हेतु आर्थिक सहायता।	₹ 25,000/-
3.	भूतपूर्व सैनिकों के आश्रित अनाथ बच्चों के पेंशन स्वीकृति तक भरण पोषण के लिए वित्तीय सहायता (एकमुश्त)।	₹ 10,000/-

आदेश द्वारा,
वी० सी० फारका,
मुख्य सचिव, हिमाचल प्रदेश।

LABOUR AND EMPLOYMENT DEPARTMENT**NOTIFICATION***D/Shala, the 15th May, 2017*

No: Shram (A) 6-2/2014 (Awards).—In exercise of the powers vested under section 17(1) of the Industrial Disputes Act, 1947, the Governor Himachal Pradesh is pleased to order the publication of awards of the following cases announced by the Presiding Officer, Labour Court D/Shala on the website of the Department of Labour & Employment Government of Himachal Pradesh:—

Sr.No.	Ref. No.	Petitioner	Respondent	Date of Award/Order
1.	674/16	Kamal Dev Sharma	M.D. DAV New Delhi & others	25-02-2017
2.	676/16	Kuljeet Singh	M.D.DAV New Delhi & others	25-02-2017
3.	234/14	Tarsem Chand	Registrar Y.S.Parmar University	28-02-2017
4.	385/14	Ruma Devi	E.E.HPPWD, Joginder Nagar	28-02-2017
5.	547/15	Neela Devi	E.E.HPPWD, Dharampur	28-02-2017
6.	548/15	Ruma Devi	-do-	28-02-2017
7.	542/15	Karam Singh	-do-	28-02-2017
8.	537/15	Chet Ram	-do-	28-02-2017
9.	538/15	Nek Ram	-do-	28-02-2017
10.	535/15	Munshi Ram	-do-	28-02-2017
11.	549/15	Savitri Devi	-do-	28-02-2017
12.	540/15	Reeta Devi	-do-	28-02-2017
13.	585/15	Nirmla Devi	-do-	28-02-2017

By order,
R. D. DHIMAN, IAS,
Pr. Secretary (Lab. & Emp.).

IN THE COURT OF K.K. SHARMA, PRESIDING JUDGE, LABOUR COURT-CUM-INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA, H.P.

Ref : No. 674/2016

Sh. Kamal Dev Sharma S/O Late Shri Brij Lal, through Shri N.L. Kaundal (A.R./Legal advisor) BMS, H/Q Balakrupi, P.O. Jalpehar, Tehsil Joginder Nagar, District Mandi. ...*Petitioner.*

Versus

1. The President /Managing Director, D.A.V. College Management Committee, Chitra Gupta Road, New Delhi.

2. The Principal, D.A.V. Public School, Hamirpur, District Hamirpur, H.P.

...Respondents.

25-02-2017 Present : None for the petitioner.

Sh. R.C. Puri, adv. vice of Sh. Rahul Gupta, adv. csl. for the respondents.

Case called on several times but none has appeared on behalf of the petitioner despite due service. It is 11.25 A.M. Be awaited and put up after lunch hours.

(K. K. SHARMA),
Presiding Judge,
Labour Court-cum-Industrial
Tribunal, Kangra at Dharamshala, H.P.

25-02-2017 Present : None for the petitioner.

Sh. R. C. Puri, adv. vice of Sh. Rahul Gupta, adv. csl. for the respondents.

Case has been called again several times but none has appeared on behalf of petitioner. It is 2.45 P.M. None appearance of petitioner today is indicative of the fact that he is not interested to pursue present reference and accordingly reference is disposed of for non-prosecution.

Reference is answered in the aforesaid terms. The parties to bear their own costs.

Let copy of the Order/Award be sent to the appropriate Government for information and further necessary action / publication.

The file, after completion be consigned to the records.

Announced : 25-02-2017

(K. K. SHARMA),
Presiding Judge,
Labour Court-cum-Industrial
Tribunal, Kangra at Dharamshala, H.P.

IN THE COURT OF K. K. SHARMA, PRESIDING JUDGE, LABOUR COURT-CUM-INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA, H.P.

Ref : No. 676/2016

Sh. Kuljeet Singh s/o Shri Jagdish Chand, through Shri N.L. Kaundal (A.R./Legal advisor)
BMS, H/Q Balakrupi, P.O. Jalpehar, Tehsil Joginder Nagar, District Mandi. ...Petitioner.

Versus

1. The President /Managing Director, D.A.V. College Management Committee, Chitra Gupta Road, New Delhi.

2. The Principal, D.A.V. Public School, Hamirpur, District Hamirpur, H.P.

...Respondents.

25-02-2017 Present : None for the petitioner.

Sh. R.C. Puri, adv. vice of Sh. Rahul Gupta, adv. csl. for the respondents.

Case called on several times but none has appeared on behalf of the petitioner despite due service. It is 11.20 A.M. Be awaited and put up after lunch hours.

(K. K. SHARMA),
Presiding Judge,
Labour Court-cum-Industrial
Tribunal, Kangra at Dharamshala, H.P.

25-02-2017 Present : None for the petitioner.

Sh. R. C. Puri, adv. vice of Sh. Rahul Gupta, adv. csl. for the respondents.

Case has been called again several times but none has appeared on behalf of petitioner. It is 2.40 P.M. None appearance of petitioner today is indicative of the fact that he is not interested to pursue present reference and accordingly reference is disposed of for non-prosecution.

Reference is answered in the aforesaid terms. The parties to bear their own costs.

Let copy of the Order/Award be sent to the appropriate Government for information and further necessary action / publication.

The file, after completion be consigned to the records.

Announced: 25-02-2017

(K. K. SHARMA)
Presiding Judge,
Labour Court-cum-Industrial
Tribunal, Kangra at Dharamshala, H.P.

IN THE COURT OF K.K. SHARMA, PRESIDING JUDGE, LABOUR COURT-CUM-INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA, H.P.

Ref : No. : 234/2014

Sh. Tarsem Chand s/o Sh. Harnam Singh, Village-Ujhan, P.O. Didwin, Tehsil Barsar, Distt. Hamirpur, H.P.

...Petitioner.

Versus

1. The Registrar, Dr. Y.S. Parmar University Horticulture & Forestry Nauni, Distt. Solan, H.P.

2. The Director, Regional Horticulture and Forestry Research Station Bhota, Distt. Hamirpur, H.P. *...Respondents.*

28-02-2017 Present : Sh. S.S. Sippy, A.R. for the petitioner.

Sh. Karan Pathania, adv. csl. for the respondents.

Corrigendum received. No PW is present. Heard. Authorised representative for the petitioner has made statement for withdrawal of reference pending before this Court. Statement recorded and placed on file. In view of the statement so made by the authorised representative for the petitioner as stated above, the reference no. 234/14 is hereby dismissed as withdrawn with liberty to file afresh claim before the competent authority.

2. Ordered accordingly. The parties to bear their own costs.
3. The reference is answered in the aforesaid terms.
4. A copy of the Order/Award be sent to the appropriate Government for information and further necessary action /publication at its end.
5. The file, after completion be consigned to the records.

Announced : 28-02-2017

(K. K. SHARMA),
Presiding Judge,
Labour Court-cum-Industrial
Tribunal, Kangra at Dharamshala, H.P.

IN THE COURT OF K.K. SHARMA, PRESIDING JUDGE, LABOUR COURT-CUM-INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA (HP)

Ref No. : 385/2014

Date of Institution : 16.12.2014

Date of decision : 28.02.2017

Smt. Ruma Devi w/o Shri Devi Singh, r/o Village Jhamehar, P.O. Basona, Tehsil Joginder Nagar, District Mandi, H.P. *...Petitioner.*

Versus

The Executive Engineer, B&R Division H.P.P.W.D., Joginder Nagar, Distt. Mandi, H.P. *...Respondent.*

Reference under section 10 (1) of the Industrial Disputes Act, 1947.

For the Petitioner : Sh. N.L. Kaundal, AR

: Sh. Vijay Kaundal, Adv.

For the Respondent : Sh. Sanjeev Singh Rana, Dy. D.A.

AWARD

1. The following reference has been received from the appropriate Government for adjudication:

“Whether time to time termination of the services of Smt. Ruma Devi, W/O Shri Devi Singh, R/O Village Jhamehar, P.O. Basona, Tehsil Joginder Nagar, District Mandi, H.P. during June, 1999 to 31-08-2007 by the Executive Engineer, B&R Division H.P.P.W.D., Joginder Nagar, District Mandi, H.P., without complying with the provisions of the Industrial Disputes Act, 1947, is legal and justified? If not, what amount of back wages, seniority, past service benefits and compensation the above worker is entitled to from the above employer?”

2. Brief facts as set up in the claim petition reveal that the services of petitioner were engaged by the B&R Department as a daily wager on muster roll basis in the year 1999 who worked under the Assistant Engineer, HPPWD Sub Division, Joginder Nagar but no appointment order/letter was issued in her name by the respondent. Averments made in claim petition further stipulates that the latter used to engage petitioner's for 15 to 20 days every month instead of the full month and that fictional breaks for 10-15 days in each month were continued to be given by the respondent till 31.08.2007. Thereafter, as per the instructions issued by the Principal Secretary (PW) to the Government of Himachal Pradesh per letter dated 14.9.2007, her services were continuously engaged by the respondent. It is alleged that the respondent had given petitioner artificial breaks from the year 1999 to 31.08.2007. Not only this, the persons who were working with her (petitioner) or joined the service after her were not given any break by the respondent deliberately. At the time while giving artificial/fictional breaks, the principle of 'last come first go' was also not followed by the respondent and the persons junior to petitioner namely Shri Rajinder Singh and Sh. Sumer Singh and others worked with the respondent/department without any break and that the period of artificial breaks is required to be counted as continuous service for the purpose of the regularization of petitioner's services. It is alleged that the persons junior to petitioner have been regularized by the respondent earlier to her contrary to the policy of the State. A similar case titled as Suresh Kumar vs. The Executive Engineer, HPPWD, Division Baijnath bearing reference No.23/2010 has already been decided in favour of the workman by this Court per Award dated 28.11.2011 and thus petitioner having completed eight years of continuous service on 30.6.2007 and was liable to be regularized as work charged beldar as per the policy framed/approved in Rakesh Kumar's case in the pay scale of Rs.4910-10680/- with all other perks and allowances. It is also contended that petitioner is still working with the respondent/department. The act and conduct of the respondent is also alleged to be unfair labour practice which also violates Sections 25-F, 25-G and 25-H of the Industrial Disputes Act, 1947 (14 of 1947, 'the Act' for short).

3. Respondent contested petition, filed separate reply inter-alia taken preliminary objections qua non-maintainability as no legal or fundamental right of the petitioner has been infringed, the petition being hit by the vice of delay and laches and bad for not impleading the State of Himachal Pradesh and the Executive Engineer, National Highway Division, HPPWD, Joginder Nagar as parties to the petition. On merits, engagement of the services of the petitioner from January, 1999 is admitted. However, it has been pleaded that the petitioner was employed by the Executive Engineer, National Highway Division, HPPWD, Joginder Nagar and that respondent's office was created in the month of January, 2004 vide notification dated 9th December, 2003. The office started functioning w.e.f. 2nd January, 2004 and after the creation of his (respondent's) office, the petitioner and some other workmen were transferred to the newly created Division from the National Highway Division, Joginder Nagar. The claim of the petitioner prior to 01.1.2004 pertains to the office of the Executive Engineer, National Highway Division, Joginder Nagar, who is not a party to the case. It has been emphatically denied that if fictional breaks were given to the

petitioner at any point of time rather the services of the petitioner were engaged as per the availability of the work and funds. As and when the services of the petitioner were engaged in accordance with her verbal requests from time to time, she was duly made aware regarding the availability of the work besides maintained that no continuous work for the entire month was provided to the petitioner who used to report for duty intermittently as per her convenience. The workmen whose names have been disclosed by the petitioner, worked in continuity and that their services have been regularized as per the seniority and policy of the State. The policy framed in Mool Raj Upadhaya's case is stated to be not applicable to the present case as in that case, one time benefit was given to the employees who had either completed 10 years of continuous service with 240 days in each calendar year as on 31.12.1993 or the employees who had rendered one or more year of service but had not completed 10 years of service up-to 31.12.1993. It is further asserted that the services of the petitioner would be regularized as per the policy of the State besides denied to have indulged in any unfair labour practice and maintained that no provision of the Act has been violated. Accordingly, cause of action as pleaded in the claim petition filed by petitioner is denied and the petition is sought to be dismissed.

4. No rejoinder has been filed by the petitioner.

5. To prove her case, petitioner had examined herself as PW1 tendered/proved her affidavit under Order 18 Rule 4 CPC and closed evidence. On the other hand, repudiating the evidence led by petitioner, respondent had examined Shri Rajeev Sharma, the then Executive Engineer, HPPWD (B&R) Division Joginder Nagar as RW1 tendered Ex. RW1/A notification dated 9th December, 2003, Ex. RW1/B copy of letter dated 2.1.2004 regarding creation of PWD Division (B&R) Joginder Nagar in the year 2004, Ex. RW1/C mandays chart of petitioner, Ex. RW1/D year-wise working days of daily wage Beldar and closed the evidence.

6. I have heard the Authorized Representative/counsel representing petitioner and Id. Dy. D.A. for respondent, gone through records of the case carefully.

7. From the contentions raised, following issues were framed on 22.04.2016 for determination:

1. Whether time to time termination of the services of the petitioner/giving breaks in service to the petitioner by the respondent during December, 1999 to 31.8.2007 is/was illegal and unjustified as alleged? ...OPP.
2. If issue no.1 is proved in affirmative, to what service benefits the petitioner is entitled to? ...OPP.
3. Whether the claim petition is not maintainable in the present form as alleged? ...OPR.
4. Whether the claim petition is bad for non-joinder of necessary parties as alleged? ...OPR.
5. Whether the petition is bad on account of delay and laches on the part of applicant as alleged? ...OPR.

Relief.

8. For the reasons to be recorded hereinafter while discussing the aforesaid issues, my findings on the aforesaid issues are as follows:

Issue No.1 : Yes

Issue No.2 : Discussed

Issue No.3 : No

Issue No.4 : No

Issue No. 5 : No

Relief : Petition is allowed per operative part of the Award.

REASONS FOR FINDINGS

ISSUES NO. 1 AND 2

9. Both these issues have been taken up together for discussion being interconnected which can be disposed of simultaneously without repetition of evidence.

10. Factum of petitioner having been appointed as daily waged beldar on muster roll by the respondent w.e.f. January, 1999 is not in dispute. It is the admitted case of petitioner that petitioner had worked since January, 1991 but she had been deliberately given fictional breaks by respondent so that petitioner did not complete 240 days to get benefits of Section 25-B of the Act. The plea of respondent, on the other hand remains that petitioner was still working but had been working intermittently as she of her own used to not come on her duty besides she willfully absented several times from her duty. To appreciate the genuineness of the plea so raised by respondent, suffice would be to state here that bald assertion of the respondent that petitioner willfully absented from her duties is devoid of merit as there is nothing corresponding in evidence to show that any letter or intimation was sent to petitioner for her unauthorized absence from her duties. Rather, it is projected to be case as if petitioner came of her own for work and left the work of her own sweet will. The plea of petitioner, on the other hand remains that fictional breaks were given to her and that several persons junior to her namely Smt. Guddi Devi, Sh. Prithi Chand, Sh. Ravinder Kumar, Sh. Dalip Singh, Sh. Gautam Ram, Sh. Bhawani Singh and Sh. Ram Dhan have been regularized by respondent and these persons were actually not given fictional breaks at any point of time.

11. A bare glance on mandays chart Ex. RW1/C would reveal that in the year 1999 petitioner had worked for 148 days, 207 days in the year 2000, 184 days in the year 2001, 184 days in the year 2002, 175 days in the year 2003, 169 days in the year 2004, 170 days in the year 2005, 164 days in the year 2006, 218 days in the year 2007, 338 days in the year 2008, 320 days in the year 2009, 312 days in the year 2010, 334 days in the year 2011 and 119 days in the year 2012. It can be noticed that till 2007 petitioner has worked for less than 240 days whereas for other remaining years she had worked for more than 240 days. It may be pertinent to state here that vide letter dated 14.9.2007 direction has been given by government to provide muster roll to all labourers who have been engaged for 15/20 days or 30 days be provided muster roll for full month in certain situation but this instruction appears to be have been completely ignored by respondent department as claimant petitioner was engaged in 199 much prior to year 2007 and had not completed 10 years who was to be issued muster roll for full month in relaxation of policy as special case. Thus, break in service being within a period of seven years from her termination was definitely a fictional break as in remaining years she had worked for more than 240 days. The act of the respondent in giving fictional break is manifestly arbitrary without any basis. Seniority list of regular labourers HPPWD (B&R) Division has also been relied upon by respondent which is Ex. RW1/D on record in which all the persons named above are shown to have joined in the years

2000, 2002, 2003 and 2004 except at serial nos. 1 to 4 who had joined earlier to petitioner as workman at serial nos. 5 to 10 joined in the year 2000, 2001, 2002 and 2003 respectively whereas petitioner had joined in January, 1999. Since respondent had not disputed to have engaged petitioner in January, 1999, she ought to have been regularized having continuously worked for about 7 years with requisite number of days required for regularization and there being no fictional break as stated above, which would show that other persons who had joined along-with her have been regularized but the petitioner has been deprived of her legitimate right for regularization till now. Although respondent department ipso facto does not dislodge petitioner from claiming her seniority and continuity in service from her initial engagement and thus fictional breaks in no manner would affect or eclipse her legitimate right of regularization in service.

12. Stepping into the witness box as PW1, petitioner has sworn detailed affidavit under Order 18 Rule 4 CPC stipulating therein that she had been engaged and disengaged between 1999 to 2007 by giving fictional break whereas the persons junior to her have been continuously engaged by department for the whole year who had completed more than 240 days in a calendar year. In cross-examination, she has admitted that she has been provided work more than 240 days of work after the year 2007 which means the dispute is only for the years 1999 to 2007 as stated in the affidavit. RW1 Shri Rajeev Sharma has admitted in cross-examination that seniority list Ex. RW1/D of all the labourers shown in the said seniority list were employed after the engagement of the petitioner. He has admitted that working of 240 days is to be established by petitioner to claim benefit of deemed service under Section 25-B of the Act. He has admitted that petitioner has been engaged in the year 1999 who had not been issued any appointment letter. He has denied that petitioner had been deliberately given breaks in the years from 1999 to 2007 but he could not prove as no corresponding record has been produced by the respondent to establish that on absence of petitioner from her duty any notice was issued for unauthorized absence and the version of RW1 that she came and go of her own from duty cannot be accepted which manifestly appear to be afterthought. Moreover, RW1 has admitted that as per record no notice was given to petitioner for her absence from duty at any point of time. As such, the plea of fictional break given to the petitioner from the year 1999 to 2007 get substantiated not only from documentary evidence on record but from testimony on oath of RW1 as well.

13. Although, petitioner being in employment at the time of passing of having fictional breaks as stated above is duly established yet she cannot be deprived of her legitimate right to seek seniority as well as continuity in service from her date of joining along-with other persons working with her besides petitioner could not have been discriminated arbitrarily between similarly situated workmen. No reason whatsoever has been assigned by respondent for not giving any fictional breaks to others which further shows that plea of non availability of work or the funds as the case may be was not correct stand of respondent made with the object to defeat the claim of petitioner. In view of aforesaid discussion, it is held that time to time termination of the services of the petitioner and giving fictional breaks in service by the respondent from 1999 to 2007 was certainly illegal and unjustified in contravention of provisions of Section 25-F, 25-G & 25-H of the Act but as the petitioner is still in employment with the respondent, she is to be given benefit of seniority and continuity in service **except back wages** particularly when she has admitted to have remained gainfully employed while working as an agriculturist. Issue in question is thus as stated above decided in part in favour of the petitioner and against the respondent.

ISSUE NO.3

14. On the plea non-maintainability of the claim petition under Section 10 of the Industrial Disputes Act, Id. Dy. D.A. representing respondent department has contended that present claim petition is not maintainable as the petitioner had abandoned the job of her own and did not join her duty despite issuance of muster roll for the relevant period. From the pleadings of the parties and

evidence on record as discussed in foregoing paras, no inference of claim petition being not maintainable could be raised instead the same is held to be maintainable. As such, the issue in hand is decided in favour of the petitioner and against the respondent.

ISSUE NO.4

15. In the light of my findings on the issues no.1 and 2 in foregoing para, it is held that the Executive Engineer, HPPWD, National Highway Division, Joginder Nagar is not a necessary party to be impleaded in this case. Claim petition as petitioner was initially appointed with respondent only PW1 has admitted in cross-examination that she was working with respondent although she earlier worked with Executive Engineer HPPWD National Highways. Thus, creation of separate HPWPD division vide office order Ex. RW1/D shall have no serious consequence on merits of case. Issue in hand is answered in negative in favour of petitioner and against respondent.

ISSUE NO.5

16. It is settled proposition of law that in case a dispute is referred to for determination, the Court will have to return a finding on merits and the delay in raising the dispute may be considered by the Court at the time of granting the final relief, as has been held by our own Hon'ble High Court in Bhatag Ram's case (2007 LHLJ 903). In **Divisional Manager, HPFC & another vs. Garibu Ram, Latest HLJ 2007 (HP) 1160**, the delay of more than 10 years was held to have not come in the way of the workman whose services were illegally terminated by holding that the provisions of Limitation Act is not applicable to industrial dispute but however, depending upon the facts and circumstances of each case, the principle of delay and laches have to be seen and applied. In **Deepa Ram vs. State of H.P. and Ors., 2005 (1) Himachal Law Journal 248**, there was a delay of 12 years. In **Ramesh Chand vs. Union of India, CWP No. 812 of 2000**, there was a delay of 9 years. In CWP No. 95 of 2000 titled as **Divisional Manager vs. Mohinder Kumar**, there was a delay of 14 years. In **Naginder Kumar vs. HPSEB and anr. 2008 (1) SLJ (H.P.) 425**, it has been held by the Hon'ble High Court of H.P. that the Labour Court cannot dismiss the claim on the ground of delay and laches once the same has been referred by the State Government and the Labour Court is bound to decide the reference which was made by the State Government and same is required to be adjudicated upon the merits without touching the aspect of delay and laches. The Hon'ble Apex Court in the **Bombay Gas Co. Ltd. vs. Gopal Bhiva & Ors, AIR 1964 SC 752**, has categorically held that as such of all those employees, who are entitled to take the benefit of Section 33-C (2) may not always be conscious of their rights and it may not be right to put the restriction of limitation in respect of claim which they may have to make under the provision and in absence of any provision for limitation, it may not be open to the Court to introduce the limitation on the ground of fairness and justice. In **Ajayab Singh vs. Sirhind Co-operative Marketing-cum Processing Society Limited and Another, (1999) 6 SCC 82**, it has been observed by the Hon'ble Supreme Court that:

“The provisions of Article 137 of Limitation Act, 1963 are not applicable to the proceeding under the ID Act. The relief under the ID Act cannot be denied merely on the ground of delay. The plea of delay if raised by the employer is required to be proved as a matter of fact by showing the real prejudice and not as a merely hypothetical defence. No reference to the Labour Court can be generally questioned on the ground of delay alone”.

17. No material has been placed on record by the respondents to establish that there was inordinate delay on the part of the petitioner in raising the dispute in the instant case or that any prejudice had been caused to respondent. Accordingly, the petition as filed by the petitioner cannot be held to be hit by the vice of delays and laches as alleged by the respondent. Hence, this issue is decided against the respondent and is answered accordingly.

RELIEF

18. As sequel to my findings on foregoing issues, it is held that the petitioner was in continuous uninterrupted service with the respondent from the date of her initial engagement and that the breaks given by the respondent being fictional in nature shall have no effect on the seniority and continuity of service of the petitioner and her seniority shall be reckoned from her initial date of engagement. Accordingly, claim of petition is hereby allowed and reference is accordingly answered in favour of petitioner. The petitioner shall thus be deemed to be in continuous service of respondent with all consequential benefits **except back wages**. She shall, however, be considered for regularization by respondent at the time when her juniors have been regularized as per policy governing daily wages as framed by State Govt. and operative from time to time. The parties, however, shall bear their own costs.

19. The reference is answered in the aforesaid terms.

20. A copy of this Award be sent to the appropriate Government for publication in the official gazette.

21. File after due completion be consigned to the Record Room.

Announced in the open Court today this 28th day of February, 2017.

(K. K. SHARMA),
Presiding Judge,
Labour Court-cum-Industrial
Tribunal, Dharamshala, H.P.

IN THE COURT OF K. K. SHARMA, PRESIDING JUDGE, LABOUR COURT-CUM-INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA (HP)

Ref No. : 547/2015

Date of Institution : 04.12.2015

Date of Decision : 28.02.2017

Smt. Neela Devi alias Leela Devi w/o Shri Inder Pal, r/o Village Banjal, P.O. Guin, Tehsil Sarkaghat, District Mandi, H.P. *...Petitioner.*

Versus

Executive Engineer, H.P.P.W.D. Division, Dharampur, Tehsil Sarkaghat, District Mandi, H.P. *...Respondent.*

Reference under Section 10 (1) of the Industrial Disputes Act, 1947.

Petitioner : Sh. N.L. Kaundal, AR : Sh. Vijay Kaundal, Adv. For the Respondent :

: Sh.Sanjeev Singh Rana, Dy. D.A.

AWARD

The reference given below has been received from the appropriate Government for adjudication:

“Whether the industrial dispute raised by the worker Smt. Neela Devi alias Leela Devi w/o Shri Inder Pal, r/o Village Banjal, P.O. Guin, Tehsil Sarkaghat, District Mandi, H.P. before the Executive Engineer, H.P.P.W.D. Division Dharampur, District Mandi, H.P. vide demand notice dated 19.02.2013 regarding her alleged illegal termination of services during year, 2000 suffers from delay and latches? If not, Whether termination of services of Smt. Neela Devi alias Leela Devi w/o Shri Inder Pal, r/o Village Banjal, P.O. Guin, Tehsil Sarkaghat, District Mandi, H.P. by the Executive Engineer, H.P.P.W.D. Division Dharampur, District Mandi, H.P. during year, 2000, without complying the provisions of the Industrial Disputes Act, 1947, is legal and justified? If not, what amount of back wages, seniority, past service benefits and compensation the above aggrieved workman is entitled to from the above employer?”

2. On receipt of reference from appropriate government, notices were issued to the parties in pursuance to which claimant/petitioner has filed statement of claim.

3. Brief facts as stipulated in the claim petition revealed that petitioner had been engaged by respondent on daily waged basis on muster roll as beldar w.e.f. 16.12.1998 where she continued to work upto year 2000 who had completed 240 days. Averments made in the claim petition further revealed that services of the petitioner had unlawfully terminated by the respondent vide verbal order in the year 2000 without prior permission and one month's notice and retrenchment compensation as envisaged under Section 25-F of the Industrial Disputes Act, 1947 (hereinafter referred to as 'the Act' for brevity). It is alleged that respondent had violated the provisions of Section 25-F of the Act. It further transpires from that between 2000 to 2005 respondent/department had terminated the services of more than 2000 daily waged workers who were engaged by the respondent in Dharampur Division from time to time without any purposes. Not only this, the principle of 'Last come First go' was not followed by the respondent as some juniors namely S/Sh. Prabhu Ram (1.8.1998), Shasi Pal (6.4.1999) and Roshani Devi (4.7.1999) have been retained in service whereas the services of petitioner had been dispensed with. The grievance of petitioner further revealed that after termination of services of petitioner so many new hands had been engaged by the respondent/department, the names of persons subsequent Mamta Devi on 6.4.2000, Inder Singh on 1.12.2003, Pradeep Kumar on 23.11.2007, Lekh Raj on 11/2004 and Satya Devi on 27.1.2011 but petitioner had not given any opportunity of reemployment by the respondent establishing violation of provisions of Section 25-H of the Act. Feeling aggrieved the action of respondent in terminating the services of petitioner she raised industrial dispute vide demand notice dated 19.2.2013 copy of the same was forwarded to Labour Officer, Mandi for further necessary action. It is alleged that Labour Officer, Mandi could not be resolved the dispute and failure report under Section 12(4) of the Industrial Disputes Act was made and the matter was referred to appropriate government i.e. Labour Commissioner who declined to refer the case of petitioner for adjudication. In pursuance to which the petitioner had approached the Hon'ble High Court of H.P. by filing CWP no.3613/2015 which had been decided on 1.9.2015 directed the Labour Commissioner to make reference to the Labour Court. The dispute stated to have been not filed on account of delay and moreover Hon'ble High Court of H.P. has condoned the delay of eight years in case of **Rajneet Singh vs. State of H.P. & Ors.** reported in **2015 (145) FLR 722**. The petitioner alleges that respondent in terminating the services of petitioner w.e.f. 2000 without complying with the necessary provisions of the Industrial Disputes Act, 1947 which was illegal and unjustified and against the mandatory provisions of the Act. Accordingly, prayed has been made to set aside the

illegal termination order of petitioner directed the respondent to reinstate the petitioner with full back wages, seniority, continuity in service with all consequential benefits.

4. The respondent contested claim petition, filed reply inter-alia taken preliminary objections of maintainability, delay and laches. On merits admitted that petitioner was engaged as daily wager on 01/1999 and she intermittently worked upto October, 1999. It is alleged that petitioner has left the job of her own who had not completed 240 days in each calendar year. It is alleged that petitioner had left the job of her own sweet will and respondent/department had not violated any provisions of the Industrial Disputes Act. The plea of respondent remained that petitioner had abandoned the job at her own sweet will. It is maintained that petitioner had left the job prior to retrenchment of the other workers in the year February, 2004 and July, 2005 and therefore the question of any illegal act of respondent does not arise. It is also contended by the respondent that there is inordinate delay in raising industrial dispute. It is alleged that petitioner had left the job of her own sweet will who was never terminated by the respondent. Alleges that question of termination of the services of petitioner by the respondent does not arise. Delay in filing the claim petition is stated to be fatal to the case of petitioner and the petitioner raised her claim when other workers raised demand notice and that petitioner was gainfully employed as an agriculturist. Accordingly, petition was sought to be dismissed.

5. The petitioner filed rejoinder, reiterated his stand as maintained in the claim petition.

6. To prove her case, petitioner had examined herself as PW1 tendered/proved her affidavit under Order 18 Rule 4 CPC Ex. PW1/A, Ex. PW1/B copy of RTI information dated 13.11.2013, Ex. PW1/C copy of mandays chart of Sh. Shashi Kant. Smt. Neelam Kumari, Clerk in the office of The E.E. HPPWD Hamirpur examined as PW2 tendered/proved Ex. P1 copy of regular appointment order of Sanjay Kumar and mandays chart of Ex. P2 and closed evidence. On the other hand, repudiating the evidence led by the petitioner, respondent examined RW1 Shri Sudhir Mittal, the then Executive Engineer, HPPWD Division Dharampur as RW1 tendered/proved his affidavit Ex. RW1/A, mandays chart of petitioner Ex. RW1/B and closed the evidence.

7. I have heard the Id. Authorized Representative/counsel of petitioner and Id. Dy. D.A. representing respondent, gone through records of the case carefully relevant for disposed of this case.

8. From the contentions raised, following issues were framed on 05.4.2016 for determination:

1. Whether the industrial dispute raised by petitioner vide demand notice dated 19-02-2013 qua her termination of service during year, 2000 by respondent suffers from the vice of delay and laches as alleged? If so, its effect? ...*OPP*.
2. Whether termination of services of the petitioner by the respondent during year, 2000 is/was illegal and unjustified as alleged? ... *OPP*.
3. If issue no.1 or issue no.2 or both are proved in affirmative, to what service benefits the petitioner is entitled to? ...*OPP*.
4. Whether the claim petition is not maintainable in the present form? ...*OPR*.

Relief.

9. For the reasons detailed here under, my findings on the above issues are as follows:—

Issue No.1 : Discussed

Issue No.2 : Yes

Issue No.3 : Discussed

Issue No.4 : No

Relief. : Petition is partly allowed awarding compensation Rs.80,000/- per operative part of award.

REASONS FOR FINDINGS

ISSUES NO.1 TO 3

10. All these issues have been taken up together for discussion being interconnected which can be disposed of simultaneously without repetition of evidence.

11. It is pertinent to mention here that claim petition before this Court was filed by petitioner in which she has prayed for setting aside the retrenchment order in the year 2000 qua her illegal termination and sought direction to the effect that services of petitioner be treated as continuous service till date with full back wages. It has further been prayed that services of petitioner be regularized after completion of eight years of service on the basis of policy framed by the State Govt. with all consequential benefits. Not only this, petitioner also prayed that her case may also be considered for engagement in service as per policy framed by the State Govt. and to another relief petitioner is entitled.

12. A bare glance at claim petition would reveal that petitioner was appointed as daily wage basis with the respondent w.e.f. 16.12.1998 on muster roll basis as beldar who continued to work till 2000 when her services were terminated without paying any retrenchment compensation under Section 25-F of the Act. It is claimed that petitioner had completed more than 240 days in each calendar prior to her termination and that while retrenching the services of petitioner principle of 'Last come First go' was not followed as Prabhu Ram (1.8.1998), Shasi Pal (6.4.1999), Roshani Devi (4.7.1999), Mamta Devi (6.4.2000), Inder Singh (1.1.2000) and Hans Raj (6.4.2000) were retained in service and thus the provisions of Section 25-G of the Act was not followed by the respondent. Mandays chart Ex. RW1/B on record reveals that petitioner had worked for 29 days in the month of January 1999, 24 days in February 1999, 01 day in March 1999, 08 days in April, 1999, 31 days in May, 1999, 30 days in June, 1999, 17 days in July, 1999, 29 days in August, 1999, 30 days in September, 1999 and 02 days in October, 1999. Even if we look at the mandays chart, this would show that immediately preceding her termination petitioner has factually worked for 201 days and not 240 days and therefore provisions of Section 25-F of the Act are not applicable and in that situation respondent would not be required to either issue notice envisaged under Section 25-F of the Act or to pay wages in lieu thereof.

13. In so far as plea of abandonment raised by respondent is concerned, the same merits rejection in view of the fact that respondent had failed to produce any record by which it could be established that whenever petitioner absented from his duty, respondent had not issued any notice or letter. On this point respondent as RW1 has specifically admitted that whenever petitioner abandoned the job, no notice had been issued. RW1 specifically admitted that no departmental inquiry was initiated against petitioner even after October, 1999. No reason whatsoever has been assigned for such any action or omission on the part of respondent in not initiating any departmental proceedings or making correspondence calling upon the petitioner to join service. This prima facie belies the stand taken by the respondent as abandonment has to be proved like any other fact in issue. As such, in absence of any specific and reliable evidence led by respondent, it would be unsafe to hold that respondent had established plea of abandonment. Hence, violation of Section 25-F of the Act has not been proved by the petitioner.

14. In so far as violation of provisions of Section 25-G of the Act is concerned, suffice would be to state here that Prabhu Ram (1.8.1998), Shasi Pal (6.4.1999), Roshani Devi (4.7.1999), Mamta Devi (6.4.2000), Inder Singh (1.1.2000) and Hans Raj (6.4.2000) were engaged between 1998 to 2003. In 2004, one Pardeep Kumar s/o Bahadur Singh was appointed on 23.11.2007, Lekh Raj s/o Ram Saran was appointed on 11/2004 and Satya Devi was engaged on 27.1.2011 but no opportunity was given to petitioner for reemployment which violates the provisions of Section 25-H of the Act. Close scrutiny of the petitioner in cross-examination would reveal that principle of 'Last come First go' was not followed for all the workmen appointed in between 1998 to 2004 whereas petitioner had been retrenched in 2000 and thereafter several persons were engaged in service but petitioner has not given any opportunity for reemployment. Since the persons mentioned in para 4 of claim petition as well as affidavit of petitioner Ex. PW1/A had been appointed by 1998 to 2000 provisions of Section 25-G of the Act could not be stated to have been violated. Be it noticed that Pardeep Kumar, Lekh Raj & Satya Devi had been appointed in 2007, 2004 and 2011 respectively. It is pertinent to mention to state here that when persons mentioned in para no. 5 of the claim petition were engaged and petitioner was not given offered for reemployment which manifestly violates the provisions of Section 25-H of the Act. From evidence, it is evidently clear that after termination of petitioner she was available for job who was not appointed however some persons fresh were allowed to join in service. As such, which is clearly violation of Section 25-H of the Act.

15. Ld. counsel for the petitioner has contended with vehemence that petitioner be treated in continuous service for eight years and for said reason the left period after 1999 be treated as regular period. It is not understood as to how petitioner claim this benefit as petitioner never worked for 240 days in any 12 months preceding termination and thus judgment of Hon'ble High Court reported in **2012 (132) FLR 528 (SC)** titled as **H.S. Rajashekara and State Bank of Mysore and another** does not come to the rescue of the petitioner. Since 240 days were never completed in a year by the petitioner, it could not be construed in any manner that termination of petitioner was illegal. Therefore, the entire period cannot be treated in service. As stated above that petitioner remained out of job after her termination but there is nothing authenticated in evidence suggesting that she remained without earning and petitioner as PW1 has nowhere stated that she had opted out for job when terminated from service. As such, it is held that after her termination she was not in government job and cross-examination of PW1 reveals that she had not been paid retrenchment compensation and notice at the time of retrenchment. Since the respondent had failed to prove on record any seniority list by which it would be stated that persons who were junior to petitioner were retained in service whereas petitioner who was senior to persons mentioned and thus respondent had clearly violated Section 25-G of Industrial Disputes Act. In view of ratio of judgment of Hon'ble Apex Court reported in **AIR 2015 SC 1373** titled as **Mackinon Machenize & Company Ltd. vs. Mackinon Employees Union** which mandatorily requires the employer to circulate seniority list as prepared. There is no iota of evidence on record remotely suggesting that respondent had provided seniority list of daily waged workers. As such, plea of petitioner that she was ignored and new hands were allowed to join is to be accepted. In view of foregoing discussions, respondent is held to have violated the provisions of Section 25-H of the Act whereas the petitioner has failed to prove violation of provisions of Section 25-F and 25-G of the Industrial Disputes Act.

16. Ld. Authorized Representative/counsel for petitioner has placed reliance of judgment of Hon'ble Apex Court reported in **2016 (151) FLR 1039** titled as **Rashtriya Colliery Mazdoor Sangh and Employers in Relation to Management of Kenduahih Colliery of M/S BCCL and Ors.**, in which Hon'ble Apex Court has awarded compensation of Rs.4 lakh to each workman. Similarly, reliance has placed on judgment of Hon'ble High Court of Punjab & Haryana reported in **2014 LLR 967** titled as **Deshsewak Foundry vs. Presiding Officer, Labour Court, Gurdaspur & Ors.**, in which compensation of Rs.5 lakh was awarded. In another judgment of Hon'ble High

Court of Rajasthan, Jaipur Bench reported in **2017 (152) FLR 206**, titled as **Youth Co-ordinator, Nehru Yuva Kendra and Labour Court No.2, Jaipur and Anr.** in which compensation of Rs.2 lakh was granted to the workman who had merely worked for two years. Thus, above said judgments disclosing awarding larger amount of compensation which the claimant/petitioner has prayed for. Id. Dy. D.A. for State has relied upon judgment of **Assistant Engineer Rajasthan Development Corporation and another vs. Geetam Singh** reported in **2013 (136) FLR 893 (SC)**, in which various criteria to be looked by the Hon'ble Apex Court in awarding compensation. It has been held that before exercising its judicial discretion, the Labour Court has to keep in view all relevant factors including the mode and manner of appointment, nature of employment, length of service, the ground on which termination has been set aside and the delay in raising industrial dispute before grant of relief in an industrial dispute.

17. Since no straight-jacket formula can be applied for determining compensation as it is to be awarded on the basis of facts of case. In **2014 LLR 967** Hon'ble High Court of Punjab & Haryana had awarded compensation of Rs.5 lac to claimant petitioner who was litigating for past 30 years. Similarly, in **2016 (151) FLR 1039** Hon'ble Apex Court awarded compensation to each worker of Rs.4 lacs. It was observed that many of the workmen were at age of retirement and that nearly 27 years had elapsed since the time of retrenchment. Moreover, the workers who were awarded compensation of Rs.4 lac belonged to skilled category of Tyndals. As such, judgment relied upon by Id. counsel/Authorized Representative for petitioner does not apply to present case rather applying the criteria laid down by Hon'ble Apex Court in **Geetam Singh's case 2013 (136) FLR 893 (SC)** has been followed and applied.

18. Id. counsel representing respondent department has also contended with vehemence that claim petition is barred by limitation on account of delay and laches. It has been pointed that termination of petitioner in this case took place on October, 1999 and the industrial dispute was raised after several years of retrenchment. Repudiating the argument by Id. counsel, Id. AR for the petitioner has placed reliance upon judgment reported in **2007 LHLJ 903 Hon'ble High Court of H.P. (Bhatag Ram's case)** in which it has been held that delay in raising dispute may be considered by court at the time of granting final relief however in various other judgments even longer delay has been condoned. In **Divisional Manager, HPFC & another vs. Garibu Ram, Latest HLJ 2007 (HP) 1160**, delay of more than 10 years was condoned besides Hon'ble High Court has held that principle of Limitation Act is not applicable to the industrial dispute. Similar view was taken by Hon'ble Apex Court in **Ajayab Singh vs. Sirhind Co-operative Marketing-cum- Processing Society Limited and Another, (1999) 6 SCC 82** in which it has been held that the principle of Limitation Act, 1963 did not apply to the proceeding under the Industrial Disputes Act.

19. Applying the ratio of judgment above stated and that petitioner had rendered service only for **ten months** who was female non-skilled worker ageing 48 years when her services were terminated and not likely to get government job at this age and had worked for 201 days when she was about to complete 240 days entitling her protection under Section 25-F of Industrial Disputes Act and demand notice was issued after a period of 14 years by the petitioner, a lump-sum compensation of Rs.80,000/- (Rupees eighty thousand only) would be a appropriate relief to the petitioner in lieu of back wages, seniority, past service benefits as well as other consequential service benefits. It is further made clear that amount of compensation shall be paid within four months from the date of Award failing which the petitioner would be entitled for interest @ 9% per annum from date of Award till its realization. Issues no. 1, 2 and 3 are answered accordingly.

ISSUE NO.4

20. On the plea of non-maintainability of the clam petition onder Section of the Industrial Disputes Act, Id. Dy. D.A. representing respondent department has failed to allege in reply in what

manner petition is not maintainable. Thus, vague plea merits rejection outright. Otherwise also, from pleadings and evidence on record, no inference of claim petition being not maintainable could be raised against claimant/petitioner. This issue is decided in favour of petitioner and against the respondent.

RELIEF

21. As sequel to my findings on foregoing issues, the respondent is hereby directed to pay the compensation of Rs.80,000/- (Rupees eighty thousand only) to the petitioner in lieu of the back wages, seniority, past service benefits as well as the other consequential service benefits. Amount of compensation so awarded shall be paid by the respondent to the petitioner within four months from today failing which the respondent shall be liable to pay the interest @ 9% per annum on the said amount from the date of award till the date of its realization. In the peculiar circumstances of the case, the parties are left to bear their own costs.

22. The reference is answered in the aforesaid terms.

23. A copy of this Award be sent to the appropriate Government for publication in the official gazette.

24. File, after due completion be consigned to the Record Room.

Announced in the open Court today this 28h day of February, 2017.

(K. K. SHARMA),
Presiding Judge,
Labour Court-cum-Industrial Tribunal,
Kangra at Dharamshala, H.P.

IN THE COURT OF K.K. SHARMA, PRESIDING JUDGE, LABOUR COURT-CUM-INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA (HP)

Ref No. : 548/2015

Date of Institution : 04.12.2015

Date of Decision : 28.02.2017

Smt. Ruma Devi w/o Shri Lachhman, r/o Village Konsal, P.O. Hyun Pehad, Tehsil Sarkaghat, District Mandi, H.P. *...Petitioner.*

Versus

Executive Engineer, H.P.P.W.D. Division, Dharampur, Tehsil Sarkaghat, District Mandi, H.P. *...Respondent.*

Reference under Section 10 (1) of the Industrial Disputes Act, 1947.

Petitioner : Sh. N.L. Kaundal, AR
: Sh. Vijay Kaundal, Adv.

For the Respondent : Sh. Sanjeev Singh Rana, Dy. D.A.

AWARD

The reference given below has been received from the appropriate Government for adjudication:

“Whether the industrial dispute raised by the worker Smt. Ruma Devi w/o Shri Lachhman, r/o Village Konsal, P.O. Hyun Pehad, Tehsil Sarkaghat, District Mandi, H.P. before the Executive Engineer, H.P.P.W.D. Division Dharampur, District Mandi, H.P. vide demand notice dated 19.02.2013 regarding her alleged illegal termination of services during June, 1999 suffers from delay and latches? If not, Whether termination of services of Smt. Ruma Devi w/o Shri Lachhman, r/o Village Konsal, P.O. Hyun Pehad, Tehsil Sarkaghat, District Mandi, H.P. by the Executive Engineer, H.P.P.W.D. Division Dharampur, District Mandi, H.P. during June, 1999, without complying the provisions of the Industrial Disputes Act, 1947, is legal and justified? If not, what amount of back wages, seniority, past service benefits and compensation the above aggrieved workman is entitled to from the above employer?”

2. On receipt of reference from appropriate government, notices were issued to the parties in pursuance to which claimant/petitioner has filed statement of claim.

3. Brief facts as stipulated in the claim petition revealed that petitioner had been engaged by respondent on daily waged basis on muster roll as beldar w.e.f. 1.1.1999 where she continued to work upto June, 1999 who had completed 240 days. Averments made in the claim petition further revealed that services of the petitioner had unlawfully terminated by the respondent vide verbal order in the year 1999 without prior permission and one month's notice and retrenchment compensation as envisaged under Section 25-F of the Industrial Disputes Act, 1947 (hereinafter referred to as 'the Act' for brevity). It is alleged that respondent had violated the provisions of Section 25-F of the Act. It further transpires from between 2000 to 2005, respondent/department had terminated the services of more than 2000 daily waged workers who were engaged by the respondent in Dharampur Division from time to time without any purposes. Not only this, the principle of 'Last come First go' was not followed by the respondent as some juniors namely S/Sh. Prabhu Ram (1.8.1998), Shasi Pal (6.4.1999) and Roshani Devi (4.7.1999) have been retained in service whereas the services of petitioner had been dispensed with. The grievance of petitioner further revealed that after termination of services of petitioner so many new hands had been engaged by the respondent/department, the names of persons subsequent Mamta Devi on 6.4.2000, Inder Singh on 1.12.2003, Pradeep Kumar on 23.11.2007, Lekh Raj on 11/2004 and Satya Devi on 27.1.2011 but petitioner had not given any opportunity of reemployment by the respondent establishing violation of provisions of Section 25-H of the Act. Feeling aggrieved the action of respondent in terminating the services of petitioner she raised industrial dispute vide demand notice dated 7.8.2013 copy of the same was forwarded to Labour Officer, Mandi for further necessary action. It is alleged that Labour Officer, Mandi could not be resolved the dispute and failure report under Section 12(4) of the Industrial Disputes Act was made and the matter was referred to appropriate government i.e. Labour Commissioner who declined to refer the case of petitioner for adjudication. In pursuance to which the petitioner had approached the Hon'ble High Court of H.P. by filing CWP no.3613/2015 which had been decided on 1.9.2015 directed the Labour Commissioner to make reference to the Labour Court. The dispute stated to have been not filed on account of delay and moreover Hon'ble High Court of H.P. has condoned the delay of eight years in case of **Rajneet Singh vs. State of H.P. & Ors.** reported in **2015 (145) FLR 722**. The petitioner alleges that respondent in terminating the services of petitioner w.e.f. 2000 without complying with the necessary provisions of the Industrial Disputes Act, 1947 which was illegal and unjustified and against the mandatory provisions of the Act. Accordingly, prayed has been made to set aside the illegal termination order of petitioner directed the respondent to reinstate the petitioner with full back wages, seniority, continuity in service with all consequential benefits.

4. The respondent contested claim petition, filed reply inter-alia taken preliminary objections of maintainability, delay and laches. On merits admitted that petitioner was engaged as daily wager on 01/1999 and she intermittently worked upto June, 1999. It is alleged that petitioner has left the job of her own who had not completed 240 days in each calendar year. It is alleged that petitioner had left the job of her own sweet will and respondent/department had not violated any provisions of the Industrial Disputes Act. The plea of respondent remained that petitioner had abandoned the job at her own sweet will. It is maintained that petitioner had left the job prior to retrenchment of the other workers in the year February, 2004 and July, 2005 and therefore the question of any illegal act of respondent does not arise. It is also contended by the respondent that there is inordinate delay in raising industrial dispute. It is alleged that petitioner had left the job of her own sweet will who was never terminated by the respondent. Alleges that question of termination of the services of petitioner by the respondent does not arise. Delay in filing the claim petition is stated to be fatal to the case of petitioner and the petitioner raised her claim when other workers raised demand notice and that petitioner was gainfully employed as an agriculturist. Accordingly, petition was sought to be dismissed.

5. The petitioner filed rejoinder, reiterated his stand as maintained in the claim petition.

6. To prove her case, petitioner had examined herself as PW1 tendered/proved her affidavit under Order 18 Rule 4 CPC Ex. PW1/A, Ex. PW1/B copy of RTI information dated 13.11.2013, Ex. PW1/C copy of mandays chart of Sh. Shashi Kant. Smt. Neelam Kumari, Clerk in the office of The E.E. HPPWD Hamirpur examined as PW2 tendered/proved Ex. P1 copy of regular appointment order of Sanjay Kumar and mandays chart of Ex. P2 and closed evidence. On the other hand, repudiating the evidence led by the petitioner, respondent examined RW1 Shri Sudhir Mittal, the then Executive Engineer, HPPWD Division Dharampur as RW1 tendered/proved his affidavit Ex. RW1/A, mandays chart of petitioner Ex. RW1/B and closed the evidence.

7. I have heard the Id. Authorized Representative/counsel of petitioner and Id. Dy. D.A. representing respondent, gone through records of the case carefully relevant for disposed of this case.

8. From the contentions raised, following issues were framed on 05.4.2016 for determination:

1. Whether the industrial dispute raised by petitioner vide demand notice dated 19-02-2013 qua her termination of service during June, 1999 by respondent suffers from the vice of delay and laches as alleged? If so, its effect? ... *OPP*.
2. Whether termination of services of the petitioner by the respondent during June, 1999 is/was illegal and unjustified as alleged? ...*OPP*.
5. If issue no.1 or issue no.2 or both are proved in affirmative, to what service benefits the petitioner is entitled to? ...*OPP*.
6. Whether the claim petition is not maintainable in the present form? ...*OPR*.
Relief.

9. For the reasons detailed here under, my findings on the above issues are as follows:-

Issue No.1 : Discussed

Issue No.2 : Yes

Issue No.3 : Discussed

Issue No.4 : No

Relief. : Petition is partly allowed awarding compensation Rs. 90,000/- per operative part of award.

REASONS FOR FINDINGS

ISSUES NO.1 TO 3

10. All these issues have been taken up together for discussion being interconnected which can be disposed of simultaneously without repetition of evidence.

11. It is pertinent to mention here that claim petition before this Court was filed by petitioner in which she has prayed for setting aside the retrenchment order in the year 1999 qua her illegal termination and sought direction to the effect that services of petitioner be treated as continuous service till date with full back wages. It has further been prayed that services of petitioner be regularized after completion of eight years of service on the basis of policy framed by the State Govt. with all consequential benefits. Not only this, petitioner also prayed that her case may also be considered for engagement in service as per policy framed by the State Govt. and to another relief petitioner is entitled.

12. A bare glance at claim petition would reveal that petitioner was appointed as daily wage basis with the respondent w.e.f. 1.1.1999 on muster roll basis as beldar who continued to work till June, 1999 when her services were terminated without paying any retrenchment compensation under Section 25-F of the Act. It is claimed that petitioner had completed more than 240 days in each calendar prior to her termination and that while retrenching the services of petitioner principle of 'Last come First go' was not followed as Prabhu Ram (1.8.1998), Shasi Pal (6.4.1999), Roshani Devi (4.7.1999), Mamta Devi (6.4.2000), Inder Singh (1.1.2000) and Hans Raj (6.4.2000) were retained in service and thus the provisions of Section 25-G of the Act was not followed by the respondent. Mandays chart Ex. RW1/B on record reveals that petitioner had worked for 29 days in the month of January 1999, 24 days in February 1999, 27 days in March 1999, 26 days in April, 1999, 29 days in May, 1999 and 27 days in June, 1999. Even if we look at the mandays chart, this would show that immediately preceding her termination petitioner has factually worked for 162 days and not 240 days and therefore provisions of Section 25-F of the Act are not applicable and in that situation respondent would not be required to either issue notice envisaged under Section 25-F of the Act or to pay wages in lieu thereof.

13. In so far as plea of abandonment raised by respondent is concerned, the same merits rejection in view of the fact that respondent had failed to produce any record by which it could be established that whenever petitioner absented from his duty, respondent had not issued any notice or letter. On this point respondent as RW1 has specifically admitted that whenever petitioner abandoned the job, no notice had been issued. RW1 specifically admitted that no departmental inquiry was initiated against petitioner even after June, 1999. No reason whatsoever has been assigned for such any action or omission on the part of respondent in not initiating any departmental proceedings or making correspondence calling upon the petitioner to join service. This prima facie belies the stand taken by the respondent as abandonment has to be proved like any other fact in issue. As such, in absence of any specific and reliable evidence led by respondent, it would be unsafe to hold that respondent had established plea of abandonment. Hence, violation of Section 25-F of the Act has not been proved by the petitioner.

14. In so far as violation of provisions of Section 25-G of the Act is concerned, suffice would be to state here that Prabhu Ram (1.8.1998), Shasi Pal (6.4.1999), Roshani Devi (4.7.1999), Mamta Devi (6.4.2000), Inder Singh (1.1.2000) and Hans Raj (6.4.2000) were engaged between

1998 to 2003. In 2004, one Pardeep Kumar s/o Bahadur Singh was appointed on 23.11.2007, Lekh Raj s/o Ram Saran was appointed on 11/2004 and Satya Devi was engaged on 27.1.2011 but no opportunity was given to petitioner for reemployment which violates the provisions of Section 25-H of the Act. Close scrutiny of the petitioner in cross-examination would reveal that principle of 'Last come First go' was not followed for all the workmen appointed in between 1998 to 2004 whereas petitioner had been retrenched in 1999 and thereafter several persons were engaged in service but petitioner has not given any opportunity for reemployment. Since the persons mentioned in para 4 of claim petition as well as affidavit of petitioner Ex. PW1/A had been appointed by 1998 to 1999 provisions of Section 25-G of the Act could not be stated to have been violated. Be it noticed that Pardeep Kumar, Lekh Raj & Satya Devi had been appointed in 2007, 2004 and 2011 respectively. It is pertinent to mention to state here that when persons mentioned in para no. 5 of the claim petition were engaged and petitioner was not given offered for reemployment which manifestly violates the provisions of Section 25-H of the Act. From evidence, it is evidently clear that after termination of petitioner she was available for job who was not appointed however some persons fresh were allowed to join in service. As such, which is clearly violation of Section 25-H of the Act.

15. Ld. counsel for the petitioner has contended with vehemence that petitioner be treated in continuous service for eight years and for said reason the left period after 1999 be treated as regular period. It is not understood as to how petitioner claim this benefit as petitioner never worked for 240 days in any 12 months preceding termination and thus judgment of Hon'ble High Court reported in **2012 (132) FLR 528 (SC)** titled as **H.S. Rajashekara and State Bank of Mysore and another** does not come to the rescue of the petitioner. Since 240 days were never completed in a year by the petitioner, it could not be construed in any manner that termination of petitioner was illegal. Therefore, the entire period cannot be treated in service. As stated above that petitioner remained out of job after her termination but there is nothing authenticated in evidence suggesting that she remained without earning and petitioner as PW1 has nowhere stated that she had opted out for job when terminated from service. As such, it is held that after her termination she was not in government job and cross-examination of PW1 reveals that she had not been paid retrenchment compensation and notice at the time of retrenchment. Since the respondent had failed to prove on record any seniority list by which it would be stated that persons who were junior to petitioner were retained in service whereas petitioner who was senior to persons mentioned and thus respondent had clearly violated Section 25-G of Industrial Disputes Act. In view of ratio of judgment of Hon'ble Apex Court reported in **AIR 2015 SC 1373** titled as **Mackinon Machenize & Company Ltd. vs. Mackinon Employees Union** which mandatorily requires the employer to circulate seniority list as prepared. There is no iota of evidence on record remotely suggesting that respondent had provided seniority list of daily waged workers. As such, plea of petitioner that she was ignored and new hands were allowed to join is to be accepted. In view of foregoing discussions, respondent is held to have violated the provisions of Section 25-H of the Act whereas the petitioner has failed to prove violation of provisions of Section 25-F and 25-G of the Industrial Disputes Act.

16. Ld. Authorized Representative/counsel for petitioner has placed reliance of judgment of Hon'ble Apex Court reported in **2016 (151) FLR 1039** titled as **Rashtriya Colliery Mazdoor Sangh and Employers in Relation to Management of Kenduahih Colliery of M/S BCCL and Ors.**, in which Hon'ble Apex Court has awarded compensation of Rs.4 lakh to each workman. Similarly, reliance has placed on judgment of Hon'ble High Court of Punjab & Haryana reported in **2014 LLR 967** titled as **Deshsewak Foundry vs. Presiding Officer, Labour Court, Gurdaspur & Ors.**, in which compensation of Rs.5 lakh was awarded. In another judgment of Hon'ble High Court of Rajasthan, Jaipur Bench reported in **2017 (152) FLR 206**, titled as **Youth Co-ordinator, Nehru Yuva Kendra and Labour Court No.2, Jaipur and Anr.** in which compensation of Rs.2 lakh was granted to the workman who had merely worked for two years. Thus, above said

judgments disclosing awarding larger amount of compensation which the claimant/petitioner has prayed for. *Ld. Dy. D.A. for State* has relied upon judgment of **Assistant Engineer Rajasthan Development Corporation and another vs. Geetam Singh** reported in **2013 (136) FLR 893 (SC)**, in which various criteria to be looked by the Hon'ble Apex Court in awarding compensation. It has been held that before exercising its judicial discretion, the Labour Court has to keep in view all relevant factors including the mode and manner of appointment, nature of employment, length of service, the ground on which termination has been set aside and the delay in raising industrial dispute before grant of relief in an industrial dispute.

17. Since no straight-jacket formula can be applied for determining compensation as it is to be awarded on the basis of facts of case. In **2014 LLR 967** Hon'ble High Court of Punjab & Haryana had awarded compensation of Rs.5 lac to claimant petitioner who was litigating for past 30 years. Similarly, in **2016 (151) FLR 1039** Hon'ble Apex Court awarded compensation to each worker of Rs.4 lacs. It was observed that many of the workmen were at age of retirement and that nearly 27 years had elapsed since the time of retrenchment. Moreover, the workers who were awarded compensation of Rs.4 lac belonged to skilled category of Tyndals. As such, judgment relied upon by *ld. counsel/Authorized Representative* for petitioner does not apply to present case rather applying the criteria laid down by Hon'ble Apex Court in **Geetam Singh's case 2013 (136) FLR 893 (SC)** has been followed and applied.

18. *Ld. counsel* representing respondent department has also contended with vehemence that claim petition is barred by limitation on account of delay and laches. It has been pointed that termination of petitioner in this case took place on June, 1999 and the industrial dispute was raised after several years of retrenchment. Repudiating the argument by *ld. counsel*, *ld. AR* for the petitioner has placed reliance upon judgment reported in **2007 LHLJ 903 Hon'ble High Court of H.P. (Bhatag Ram's case)** in which it has been held that delay in raising dispute may be considered by court at the time of granting final relief however in various other judgments even longer delay has been condoned. In **Divisional Manager, HPFC & another vs. Garibu Ram, Latest HLJ 2007 (HP) 1160**, delay of more than 10 years was condoned besides Hon'ble High Court has held that principle of Limitation Act is not applicable to the industrial dispute. Similar view was taken by Hon'ble Apex Court in **Ajayab Singh vs. Sirhind Co-operative Marketing-cum-Processing Society Limited and Another, (1999) 6 SCC 82** in which it has been held that the principle of Limitation Act, 1963 did not apply to the proceeding under the Industrial Disputes Act.

19. Applying the ratio of judgment above stated and that petitioner had rendered service only for **six months** who was female non-skilled worker ageing 48 years when her services were terminated and not likely to get government job at this age and had worked for 162 days when she was about to complete 240 days entitling her protection under Section 25-F of Industrial Disputes Act and demand notice was issued after a period of 14 years by the petitioner, a lump-sum compensation of Rs.90,000/- (Rupees Ninety thousand only) would be a appropriate relief to the petitioner in lieu of back wages, seniority, past service benefits as well as other consequential service benefits. It is further made clear that amount of compensation shall be paid within four months from the date of Award failing which the petitioner would be entitled for interest @ 9% per annum from date of Award till its realization. Issues no. 1, 2 and 3 are answered accordingly.

ISSUE NO.4

20. On the plea of non-maintainability of the claim petition under Section 10 of the Industrial Disputes Act, *ld. Dy. D.A.* representing respondent department has failed to allege in reply in what manner petition is not maintainable. Thus, vague plea merits rejection outright. Otherwise also, from pleadings and evidence on record, no inference of claim petition being not maintainable could be raised against claimant/petitioner. This issue is decided in favour of petitioner and against the respondent.

RELIEF

21. As sequel to my findings on foregoing issues, the respondent is hereby directed to pay the compensation of Rs.90,000/- (Rupees Ninety thousand only) to the petitioner in lieu of the back wages, seniority, past service benefits as well as the other consequential service benefits. Amount of compensation so awarded shall be paid by the respondent to the petitioner within four months from today failing which the respondent shall be liable to pay the interest @ 9% per annum on the said amount from the date of award till the date of its realization. In the peculiar circumstances of the case, the parties are left to bear their own costs.

22. The reference is answered in the aforesaid terms.

23. A copy of this Award be sent to the appropriate Government for publication in the official gazette.

24. File, after due completion be consigned to the Record Room.

Announced in the open Court today this 28th day of February, 2017.

(K. K. SHARMA),
Presiding Judge,
Labour Court-cum-Industrial Tribunal,
Kangra at Dharamshala, H.P.

**IN THE COURT OF K.K. SHARMA, PRESIDING JUDGE, LABOUR COURT-CUM-
INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA (HP)**

Ref No. : 542/2015

Date of Institution : 04.12.2015

Date of Decision : 28.02.2017

Shri Karam Singh s/o Shri Brikam Ram, r/o Village Kounsai, P.O. Pehad, Tehsil Sarkaghat,
District Mandi, H.P. *...Petitioner.*

Versus

Executive Engineer, H.P.P.W.D. Division, Dharampur, Tehsil Sarkaghat, District Mandi,
H.P. *...Respondent.*

Reference under Section 10 (1) of the Industrial Disputes Act, 1947.

For the Petitioner : Sh. N.L. Kaundal, AR
: Sh. Vijay Kaundal, Adv.

For the Respondent : Sh. Sanjeev Singh Rana, Dy. D.A.

AWARD

The reference given below has been received from the appropriate Government for adjudication:

“Whether the industrial dispute raised by the worker Shri Karam Singh s/o Shri Brikam Ram, r/o Village Kounsai, P.O. Pehad, Tehsil Sarkaghat, District Mandi, H.P. before the Executive Engineer, H.P.P.W.D. Division Dharampur, District Mandi, H.P. vide demand notice dated 22.01.2013 regarding his alleged illegal termination of services during year, 2001 suffers from delay and laches? If not, Whether termination of services of Shri Karam Singh s/o Shri Brikam Ram, r/o Village Kounsai, P.O. Pehad, Tehsil Sarkaghat, District Mandi, H.P. by the Executive Engineer, H.P.P.W.D. Division Dharampur, District Mandi, H.P. during year, 2001 without complying the provisions of the Industrial Disputes Act, 1947, is legal and justified? If not, what amount of back wages, seniority, past service benefits and compensation the above aggrieved workman is entitled to from the above employer?”

2. On receipt of reference from appropriate government, notices were issued to the parties in pursuance to which claimant/petitioner has filed statement of claim.

3. Brief facts as stipulated in the claim petition revealed that petitioner had been engaged by respondent on daily waged basis on muster roll as beldar w.e.f. July, 1998 where he continued to work upto the year 2001 who had completed 240 days. Averments made in the claim petition further revealed that services of the petitioner had unlawfully terminated by the respondent vide verbal order in the year 2001 without prior permission and one month's notice and retrenchment compensation as envisaged under Section 25-F of the Industrial Disputes Act, 1947 (hereinafter referred to as 'the Act' for brevity). It is alleged that respondent had violated the provisions of Section 25-F of the Act. It further transpires from between 2000 to 2005, respondent/department had terminated the services of more than 2000 daily waged workers who were engaged by the respondent in Dharampur Division from time to time without any purposes. Not only this, the principle of 'Last come First go' was not followed by the respondent as some juniors namely S/Sh. Prabhu Ram (1.8.1998), Shasi Pal (6.4.1999) and Roshani Devi (4.7.1999) have been retained in service whereas the services of petitioner had been dispensed with. The grievance of petitioner further revealed that after termination of services of petitioner so many new hands had been engaged by the respondent/department, the names of persons subsequent Mamta Devi on 6.4.2000, Inder Singh on 1.12.2003, Pradeep Kumar on 23.11.2007, Lekh Raj on 11/2004 and Satya Devi on 27.1.2011 but petitioner had not given any opportunity of reemployment by the respondent establishing violation of provisions of Section 25-H of the Act. Feeling aggrieved the action of respondent in terminating the services of petitioner he raised industrial dispute vide demand notice dated 22.1.2013 copy of the same was forwarded to Labour Officer, Mandi for further necessary action. It is alleged that Labour Officer, Mandi could not be resolved the dispute and failure report under Section 12(4) of the Industrial Disputes Act was made and the matter was referred to appropriate government i.e. Labour Commissioner who declined to refer the case of petitioner for adjudication. In pursuance to which the petitioner had approached the Hon'ble High Court of H.P. by filing CWP no.3602/2015 which had been decided on 31.8.2015 directed the Labour Commissioner to make reference to the Labour Court. The dispute stated to have been not filed on account of delay and moreover Hon'ble High Court of H.P. has condoned the delay of eight years in case of **Rajneet Singh vs. State of H.P. & Ors.** reported in **2015 (145) FLR 722**. The petitioner alleges that respondent in terminating the services of petitioner w.e.f. 2001 without complying with the necessary provisions of the Industrial Disputes Act, 1947 which was illegal and unjustified and against the mandatory provisions of the Act. Accordingly, prayed has been made to set aside the illegal termination order of petitioner directed the respondent to reinstate the petitioner with full back wages, seniority, continuity in service with all consequential benefits.

4. The respondent contested claim petition, filed reply inter-alia taken preliminary objections of maintainability, delay and laches. On merits admitted that petitioner was engaged as daily wager on 01/1999 and he intermittently worked upto April, 1999. It is alleged that petitioner has left the job of his own who had not completed 240 days in each calendar year. It is alleged that petitioner had left the job of his own sweet will and respondent/department had not violated any provisions of the Industrial Disputes Act. The plea of respondent remained that petitioner had abandoned the job at his own sweet will. It is maintained that petitioner had left the job prior to retrenchment of the other workers in the year February, 2004 and July, 2005 and therefore the question of any illegal act of respondent does not arise. It is also contended by the respondent that there is inordinate delay in raising industrial dispute. It is alleged that petitioner had left the job of his own sweet will who was never terminated by the respondent. Alleges that question of termination of the services of petitioner by the respondent does not arise. Delay in filing the claim petition is stated to be fatal to the case of petitioner and the petitioner raised his claim when other workers raised demand notice and that petitioner was gainfully employed as an agriculturist. Accordingly, petition was sought to be dismissed.

5. The petitioner filed rejoinder, reiterated his stand as maintained in the claim petition.

6. To prove his case, petitioner had examined himself as PW1 tendered/proved his affidavit under Order 18 Rule 4 CPC Ex. PW1/A, Ex. PW1/B copy of RTI information dated 13.11.2013, Ex. PW1/C copy of mandays chart of Sh. Shashi Kant. Smt. Neelam Kumari, Clerk in the office of The E.E. HPPWD Hamirpur examined as PW2 tendered/proved Ex. P1 copy of regular appointment order of Sanjay Kumar and mandays chart of Ex. P2 and closed evidence. On the other hand, repudiating the evidence led by the petitioner, respondent examined RW1 Shri Sudhir Mittal, the then Executive Engineer, HPPWD Division Dharampur as RW1 tendered/proved his affidavit Ex. RW1/A, mandays chart of petitioner Ex. RW1/B and closed the evidence.

7. I have heard the Id. Authorized Representative/counsel of petitioner and Id. Dy. D.A. representing respondent, gone through records of the case carefully relevant for disposed of this case.

8. From the contentions raised, following issues were framed on 05.4.2016 for determination:

1. Whether the industrial dispute raised by petitioner vide demand notice dated 22-01-2013 qua his termination of service during year, 2001 by respondent suffers from the vice of delay and laches as alleged? If so, its effect? ...*OPP*.
2. Whether termination of services of the petitioner by the respondent during year, 2001 is/was illegal and unjustified as alleged? ...*OPP*.
7. If issue no.1 or issue no.2 or both are proved in affirmative, to what service benefits the petitioner is entitled to? ...*OPP*.
8. Whether the claim petition is not maintainable in the present form? ...*OPR*.
Relief.

9. For the reasons detailed here under, my findings on the above issues are as follows:—

Issue No.1 : Discussed

Issue No.2 : Yes

Issue No.3 : Discussed

Issue No.4 : No

Relief. : Petition is partly allowed awarding compensation Rs. 50,000/- per operative part of award.

REASONS FOR FINDINGS

ISSUES NO.1 TO 3

10. All these issues have been taken up together for discussion being interconnected which can be disposed of simultaneously without repetition of evidence.

11. It is pertinent to mention here that claim petition before this Court was filed by petitioner in which he has prayed for setting aside the retrenchment order in the year 2001 qua his illegal termination and sought direction to the effect that services of petitioner be treated as continuous service till date with full back wages. It has further been prayed that services of petitioner be regularized after completion of eight years of service on the basis of policy framed by the State Govt. with all consequential benefits. Not only this, petitioner also prayed that his case may also be considered for engagement in service as per policy framed by the State Govt. and to another relief petitioner is entitled.

12. A bare glance at claim petition would reveal that petitioner was appointed as daily wage basis with the respondent w.e.f. July, 1998 on muster roll basis as beldar who continued to work till 2001 when his services were terminated without paying any retrenchment compensation under Section 25-F of the Act. It is claimed that petitioner had completed more than 240 days in each calendar prior to his termination and that while retrenching the services of petitioner principle of 'Last come First go' was not followed as Prabhu Ram (1.8.1998), Shasi Pal (6.4.1999), Roshani Devi (4.7.1999), Mamta Devi (6.4.2000), Inder Singh (1.1.2000) and Hans Raj (6.4.2000) were retained in service and thus the provisions of Section 25-G of the Act was not followed by the respondent. Mandays chart Ex. RW1/B on record reveals that petitioner had worked for 25 days in the month of January 1999, 15 days in February 1999, 22 days in March 1999 and 08 days in April, 1999. Even if we look at the mandays chart, this would show that immediately preceding his termination petitioner has factually worked for 70 days and not 240 days and therefore provisions of Section 25-F of the Act are not applicable and in that situation respondent would not be required to either issue notice envisaged under Section 25-F of the Act or to pay wages in lieu thereof.

13. In so far as plea of abandonment raised by respondent is concerned, the same merits rejection in view of the fact that respondent had failed to produce any record by which it could be established that whenever petitioner absented from his duty, respondent had not issued any notice or letter. On this point respondent as RW1 has specifically admitted that whenever petitioner abandoned the job, no notice had been issued. RW1 specifically admitted that no departmental inquiry was initiated against petitioner even after April, 1999. No reason whatsoever has been assigned for such any action or omission on the part of respondent in not initiating any departmental proceedings or making correspondence calling upon the petitioner to join service. This prima facie belies the stand taken by the respondent as abandonment has to be proved like any other fact in issue. As such, in absence of any specific and reliable evidence led by respondent, it would be unsafe to hold that respondent had established plea of abandonment. Hence, violation of Section 25-F of the Act has not been proved by the petitioner.

14. In so far as violation of provisions of Section 25-G of the Act is concerned, suffice would be to state here that Prabhu Ram (1.8.1998), Shasi Pal (6.4.1999), Roshani Devi (4.7.1999), Mamta Devi (6.4.2000), Inder Singh (1.1.2000) and Hans Raj (6.4.2000) were engaged between 1998 to 2003. In 2004, one Pardeep Kumar s/o Bahadur Singh was appointed on 23.11.2007, Lekh

Raj s/o Ram Saran was appointed on 11/2004 and Satya Devi was engaged on 27.1.2011 but no opportunity was given to petitioner for reemployment which violates the provisions of Section 25-H of the Act. Close scrutiny of the petitioner in cross-examination would reveal that principle of 'Last come First go' was not followed for all the workmen appointed in between 1998 to 2004 whereas petitioner had been retrenched in 1999 and thereafter several persons were engaged in service but petitioner has not given any opportunity for reemployment. Since the persons mentioned in para 4 of claim petition as well as affidavit of petitioner Ex. PW1/A had been appointed by 1998 to 1999 provisions of Section 25-G of the Act could not be stated to have been violated. Be it noticed that Pardeep Kumar, Lekh Raj & Satya Devi had been appointed in 2007, 2004 and 2011 respectively. It is pertinent to mention to state here that when persons mentioned in para no. 5 of the claim petition were engaged and petitioner was not given offered for reemployment which manifestly violates the provisions of Section 25-H of the Act. From evidence, it is evidently clear that after termination of petitioner he was available for job who was not appointed however some persons fresh were allowed to join in service. As such, which is clearly violation of Section 25-H of the Act.

15. Ld. counsel for the petitioner has contended with vehemence that petitioner be treated in continuous service for eight years and for said reason the left period after 1999 be treated as regular period. It is not understood as to how petitioner claim this benefit as petitioner never worked for 240 days in any 12 months preceding termination and thus judgment of Hon'ble High Court reported in **2012 (132) FLR 528 (SC)** titled as **H.S. Rajashekara and State Bank of Mysore and another** does not come to the rescue of the petitioner. Since 240 days were never completed in a year by the petitioner, it could not be construed in any manner that termination of petitioner was illegal. Therefore, the entire period cannot be treated in service. As stated above that petitioner remained out of job after his termination but there is nothing authenticated in evidence suggesting that he remained without earning and petitioner as PW1 has nowhere stated that he had opted out for job when terminated from service. As such, it is held that after his termination he was not in government job and cross-examination of PW1 reveals that he had not been paid retrenchment compensation and notice at the time of retrenchment. Since the respondent had failed to prove on record any seniority list by which it would be stated that persons who were junior to petitioner were retained in service whereas petitioner who was senior to persons mentioned and thus respondent had clearly violated Section 25-G of Industrial Disputes Act. In view of ratio of judgment of Hon'ble Apex Court reported in **AIR 2015 SC 1373** titled as **Mackinon Machenize & Company Ltd. vs. Mackinon Employees Union** which mandatorily requires the employer to circulate seniority list as prepared. There is no iota of evidence on record remotely suggesting that respondent had provided seniority list of daily waged workers. As such, plea of petitioner that he was ignored and new hands were allowed to join is to be accepted. In view of foregoing discussions, respondent is held to have violated the provisions of Section 25-H of the Act whereas the petitioner has failed to prove violation of provisions of Section 25-F and 25-G of the Industrial Disputes Act.

16. Ld. Authorized Representative/counsel for petitioner has placed reliance of judgment of Hon'ble Apex Court reported in **2016 (151) FLR 1039** titled as **Rashtriya Colliery Mazdoor Sangh and Employers in Relation to Management of Kenduahih Colliery of M/S BCCL and Ors.**, in which Hon'ble Apex Court has awarded compensation of Rs.4 lakh to each workman. Similarly, reliance has placed on judgment of Hon'ble High Court of Punjab & Haryana reported in **2014 LLR 967** titled as **Deshsewak Foundry vs. Presiding Officer, Labour Court, Gurdaspur & Ors.**, in which compensation of Rs.5 lakh was awarded. In another judgment of Hon'ble High Court of Rajasthan, Jaipur Bench reported in **2017 (152) FLR 206**, titled as **Youth Co-ordinator, Nehru Yuva Kendra and Labour Court No.2, Jaipur and Anr.** in which compensation of Rs.2 lakh was granted to the workman who had merely worked for two years. Thus, above said judgments disclosing awarding larger amount of compensation which the claimant/petitioner has

prayed for. Id. Dy. D.A. for State has relied upon judgment of **Assistant Engineer Rajasthan Development Corporation and another vs. Geetam Singh** reported in **2013 (136) FLR 893 (SC)**, in which various criteria to be looked by the Hon'ble Apex Court in awarding compensation. It has been held that before exercising its judicial discretion, the Labour Court has to keep in view all relevant factors including the mode and manner of appointment, nature of employment, length of service, the ground on which termination has been set aside and the delay in raising industrial dispute before grant of relief in an industrial dispute

17. Since no straight-jacket formula can be applied for determining compensation as it is to be awarded on the basis of facts of case. In **2014 LLR 967** Hon'ble High Court of Punjab & Haryana had awarded compensation of Rs.5 lac to claimant petitioner who was litigating for past 30 years. Similarly, in **2016 (151) FLR 1039** Hon'ble Apex Court awarded compensation to each worker of Rs.4 lacs. It was observed that many of the workmen were at age of retirement and that nearly 27 years had elapsed since the time of retrenchment. Moreover, the workers who were awarded compensation of Rs.4 lac belonged to skilled category of Tyndals. As such, judgment relied upon by Id. counsel/Authorized Representative for petitioner does not apply to present case rather applying the criteria laid down by Hon'ble Apex Court in **Geetam Singh's case 2013 (136) FLR 893 (SC)** has been followed and applied.

18. Id. counsel representing respondent department has also contended with vehemence that claim petition is barred by limitation on account of delay and laches. It has been pointed that termination of petitioner in this case took place on April, 1999 and the industrial dispute was raised after several years of retrenchment. Repudiating the argument by Id. counsel, Id. AR for the petitioner has placed reliance upon judgment reported in **2007 LHLJ 903 Hon'ble High Court of H.P. (Bhatag Ram's case)** in which it has been held that delay in raising dispute may be considered by court at the time of granting final relief however in various other judgments even longer delay has been condoned. In **Divisional Manager, HPFC & another vs. Garibu Ram, Latest HLJ 2007 (HP) 1160**, delay of more than 10 years was condoned besides Hon'ble High Court has held that principle of Limitation Act is not applicable to the industrial dispute. Similar view was taken by Hon'ble Apex Court in **Ajayab Singh vs. Sirhind Co-operative Marketing-cum-Processing Society Limited and Another, (1999) 6 SCC 82** in which it has been held that the principle of Limitation Act, 1963 did not apply to the proceeding under the Industrial Disputes Act.

19. Applying the ratio of judgment above stated and that petitioner had rendered service only for 70 days in **four months** who was non-skilled worker ageing 36 years when his services were terminated and not likely to get government job at this age although not entitled for protection under Section 25-F of Industrial Disputes Act however demand notice was issued after a period of 14 years by the petitioner, a lump-sum compensation of Rs.50,000/- (Rupees fifty thousand only) would be a appropriate relief to the petitioner in lieu of back wages, seniority, past service benefits as well as other consequential service benefits. It is further made clear that amount of compensation shall be paid within four months from the date of Award failing which the petitioner would be entitled for interest @ 9% per annum from date of Award till its realization. Issues no. 1, 2 and 3 are answered accordingly.

ISSUE NO.4

20. On the plea of non-maintainability of the claim petition under Section 10 of the Industrial Disputes Act, Id. Dy. D.A. representing respondent department has failed to allege in reply in what manner petition is not maintainable. Thus, vague plea merits rejection outright. Otherwise also, from pleadings and evidence on record, no inference of claim petition being not maintainable could be raised against claimant/petitioner. This issue is decided in favour of petitioner and against the respondent.

RELIEF

21. As sequel to my findings on foregoing issues, the respondent is hereby directed to pay the compensation of Rs.50,000/- (Rupees fifty thousand only) to the petitioner in lieu of the back wages, seniority, past service benefits as well as the other consequential service benefits. Amount of compensation so awarded shall be paid by the respondent to the petitioner within four months from today failing which the respondent shall be liable to pay the interest @ 9% per annum on the said amount from the date of award till the date of its realization. In the peculiar circumstances of the case, the parties are left to bear their own costs.

22. The reference is answered in the aforesaid terms.

23. A copy of this Award be sent to the appropriate Government for publication in the official gazette.

24. File, after due completion be consigned to the Record Room.

Announced in the open Court today this 28th day of February, 2017.

(K. K. SHARMA),
Presiding Judge,
Labour Court-cum-Industrial Tribunal,
Kangra at Dharamshala, H.P.

IN THE COURT OF K.K. SHARMA, PRESIDING JUDGE, LABOUR COURT-CUM-INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA (HP)

Ref No. : 537/2015

Date of Institution : 04.12.2015

Date of Decision : 28.02.2017

Shri Chet Ram s/o Shri Prabhu Ram, r/o Village Didnu, P.O. Baroti, Tehsil Sarkaghat,
District Mandi, H.P. *...Petitioner.*

Versus

Executive Engineer, H.P.P.W.D. Division, Dharampur, Tehsil Sarkaghat, District Mandi,
H.P. *...Respondent.*

Reference under Section 10 (1) of the Industrial Disputes Act, 1947.

Petitioner : Sh. N.L. Kaundal, AR

: Sh. Vijay Kaundal, Adv.

For the Respondent : Sh. Sanjeev Singh Rana, Dy. D.A.

AWARD

The reference given below has been received from the appropriate Government for adjudication:

“Whether the industrial dispute raised by the worker Shri Chet Ram s/o Shri Prabhu Ram, r/o Village Didnu, P.O. Baroti, Tehsil Sarkaghat, District Mandi, H.P. before the Executive Engineer, H.P.P.W.D. Division Dharampur, District Mandi, H.P. vide demand notice dated 02.02.2013 regarding his alleged illegal termination of services during July, 1999 suffers from delay and latches? If not, Whether termination of services of Shri Chet Ram s/o Shri Prabhu Ram, r/o Village Didnu, P.O. Baroti, Tehsil Sarkaghat, District Mandi, H.P. by the Executive Engineer, H.P.P.W.D. Division Dharampur, District Mandi, H.P. during July, 1999 without complying the provisions of the Industrial Disputes Act, 1947, is legal and justified? If not, what amount of back wages, seniority, past service benefits and compensation the above aggrieved workman is entitled to from the above employer?”

2. On receipt of reference from appropriate government, notices were issued to the parties in pursuance to which claimant/petitioner has filed statement of claim.

3. Brief facts as stipulated in the claim petition revealed that petitioner had been engaged by respondent on daily waged basis on muster roll as beldar w.e.f. 15.5.1998 where he continued to work upto July, 1999 who had completed 240 days. Averments made in the claim petition further revealed that services of the petitioner had unlawfully terminated by the respondent vide verbal order in the year 1999 without prior permission and one month's notice and retrenchment compensation as envisaged under Section 25-F of the Industrial Disputes Act, 1947 (hereinafter referred to as 'the Act' for brevity). It is alleged that respondent had violated the provisions of Section 25-F of the Act. It further transpires from between 2000 to 2005, respondent/department had terminated the services of more than 2000 daily waged workers who were engaged by the respondent in Dharampur Division from time to time without any purposes. Not only this, the principle of 'Last come First go' was not followed by the respondent as some juniors namely S/Sh. Prabhu Ram (1.8.1998), Shasi Pal (6.4.1999) and Roshani Devi (4.7.1999) have been retained in service whereas the services of petitioner had been dispensed with. The grievance of petitioner further revealed that after termination of services of petitioner so many new hands had been engaged by the respondent/department, the names of persons subsequent Mamta Devi on 6.4.2000, Inder Singh on 1.12.2003, Pradeep Kumar on 23.11.2007, Lekh Raj on 11/2004 and Satya Devi on 27.1.2011 but petitioner had not given any opportunity of reemployment by the respondent establishing violation of provisions of Section 25-H of the Act. Feeling aggrieved the action of respondent in terminating the services of petitioner he raised industrial dispute vide demand notice dated 2.2.2013 copy of the same was forwarded to Labour Officer, Mandi for further necessary action. It is alleged that Labour Officer, Mandi could not be resolved the dispute and failure report under Section 12(4) of the Industrial Disputes Act was made and the matter was referred to appropriate government i.e. Labour Commissioner who declined to refer the case of petitioner for adjudication. In pursuance to which the petitioner had approached the Hon'ble High Court of H.P. by filing CWP no.3600/2015 which had been decided on 31.8.2015 directed the Labour Commissioner to make reference to the Labour Court. The dispute stated to have been not filed on account of delay and moreover Hon'ble High Court of H.P. has condoned the delay of eight years in case of **Rajneet Singh vs. State of H.P. & Ors.** reported in **2015 (145) FLR 722**. The petitioner alleges that respondent in terminating the services of petitioner in the month of July, 1999 without complying with the necessary provisions of the Industrial Disputes Act, 1947 which was illegal and unjustified and against the mandatory provisions of the Act. Accordingly, prayed has been made to set aside the illegal termination order of petitioner directed the respondent to reinstate the petitioner with full back wages, seniority, continuity in service with all consequential benefits.

4. The respondent contested claim petition, filed reply inter-alia taken preliminary objections of maintainability, delay and laches. On merits admitted that petitioner was engaged as daily wager on 05/1998 and he intermittently worked upto July, 1999. It is alleged that petitioner has left the job of his own who had not completed 240 days in each calendar year. It is alleged that petitioner had left the job of his own sweet will and respondent/department had not violated any provisions of the Industrial Disputes Act. The plea of respondent remained that petitioner had abandoned the job at his own sweet will. It is maintained that petitioner had left the job prior to retrenchment of the other workers in the year February, 2004 and July, 2005 and therefore the question of any illegal act of respondent does not arise. It is also contended by the respondent that there is inordinate delay in raising industrial dispute. It is alleged that petitioner had left the job of his own sweet will who was never terminated by the respondent. Alleges that question of termination of the services of petitioner by the respondent does not arise. Delay in filing the claim petition is stated to be fatal to the case of petitioner and the petitioner raised his claim when other workers raised demand notice and that petitioner was gainfully employed as an agriculturist. Accordingly, petition was sought to be dismissed.

5. The petitioner filed rejoinder, reiterated his stand as maintained in the claim petition.

6. To prove his case, petitioner had examined himself as PW1 tendered/proved his affidavit under Order 18 Rule 4 CPC Ex. PW1/A, Ex. PW1/B copy of RTI information dated 13.11.2013, Ex. PW1/C copy of mandays chart of Sh. Shashi Kant. Smt. Neelam Kumari, Clerk in the office of The E.E. HPPWD Hamirpur examined as PW2 tendered/proved Ex. P1 copy of regular appointment order of Sanjay Kumar and mandays chart of Ex. P2 and closed evidence. On the other hand, repudiating the evidence led by the petitioner, respondent examined RW1 Shri Sudhir Mittal, the then Executive Engineer, HPPWD Division Dharampur as RW1 tendered/proved his affidavit Ex. RW1/A, mandays chart of petitioner Ex. RW1/B and closed the evidence.

7. I have heard the Id. Authorized Representative/counsel of petitioner and Id. Dy. D.A. representing respondent, gone through records of the case carefully relevant for disposed of this case.

8. From the contentions raised, following issues were framed on 05.4.2016 for determination:

1. Whether the industrial dispute raised by petitioner vide demand notice dated 2-02-2013 qua his termination of service during July, 1999 by respondent suffers from the vice of delay and laches as alleged? If so, its effect? ...*OPP*.
2. Whether termination of services of the petitioner by the respondent during July, 1999 is/was illegal and unjustified as alleged? ...*OPP*.
9. If issue no.1 or issue no.2 or both are proved in affirmative, to what service benefits the petitioner is entitled to? ...*OPP*.
10. Whether the claim petition is not maintainable in the present form? ...*OPR*.

Relief.

9. For the reasons detailed here under, my findings on the above issues are as follows:—

Issue No.1 : Discussed

Issue No.2 : Yes

Issue No.3 : Discussed

Issue No.4 : No

Relief. : Petition is partly allowed awarding compensation Rs.1,10,000/- per operative part of award.

REASONS FOR FINDINGS

ISSUES NO.1 TO 3

10. All these issues have been taken up together for discussion being interconnected which can be disposed of simultaneously without repetition of evidence.

11. It is pertinent to mention here that claim petition before this Court was filed by petitioner in which he has prayed for setting aside the retrenchment order in the year 1999 qua his illegal termination and sought direction to the effect that services of petitioner be treated as continuous service till date with full back wages. It has further been prayed that services of petitioner be regularized after completion of eight years of service on the basis of policy framed by the State Govt. with all consequential benefits. Not only this, petitioner also prayed that his case may also be considered for engagement in service as per policy framed by the State Govt. and to another relief petitioner is entitled.

12. A bare glance at claim petition would reveal that petitioner was appointed as daily wage basis with the respondent w.e.f. 15.5.1998 on muster roll basis as beldar who continued to work till July, 1999 when his services were terminated without paying any retrenchment compensation under Section 25-F of the Act. It is claimed that petitioner had completed more than 240 days in each calendar prior to his termination and that while retrenching the services of petitioner principle of „Last come First go” was not followed as Prabhu Ram (1.8.1998), Shasi Pal (6.4.1999), Roshani Devi (4.7.1999), Mamta Devi (6.4.2000), Inder Singh (1.1.2000) and Hans Raj (6.4.2000) were retained in service and thus the provisions of Section 25-G of the Act was not followed by the respondent. Mandays chart Ex. RW1/B on record reveals that petitioner had worked for 31 days in the month of May, 1998, 30 days in June, 1998, 27 days in July, 1998, 28 days in September, 1998, 30 days in October, 1998, 20 days in November, 1998, 29 days in December, 1998, 31 days in January, 1999, 23 days in February 1999, 31 days in March 1999, 22 days in April, 1999, 31 days in May, 1999, 30 days in June, 1999 and 19 days in July, 1999. Even if we look at the mandays chart, this would show that immediately preceding his termination petitioner has factually worked for more than 240 days and therefore provisions of Section 25-F of the Act is applicable and in that situation respondent would be required to either issue notice envisaged under Section 25-F of the Act or to pay wages in lieu thereof but the same was not done by the respondent. A bare glance at the mandays chart Ex. RW1/B would reveal that petitioner had worked for more than 240 days immediately prior to his retrenchment.

13. In so far as plea of abandonment raised by respondent is concerned, the same merits rejection in view of the fact that respondent had failed to produce any record by which it could be established that whenever petitioner absented from his duty, respondent had not issued any notice or letter. On this point respondent as RW1 has specifically admitted that whenever petitioner abandoned the job, no notice had been issued. RW1 specifically admitted that no departmental inquiry was initiated against petitioner even after July, 1999. No reason whatsoever has been assigned for such any action or omission on the part of respondent in not initiating any departmental proceedings or making correspondence calling upon the petitioner to join service. This prima facie belies the stand taken by the respondent as abandonment has to be proved like any

other fact in issue. As such, in absence of any specific and reliable evidence led by respondent, it would be unsafe to hold that respondent had established plea of abandonment. Hence, violation of Section 25-F of the Act has not been proved by the petitioner.

14. In so far as violation of provisions of Section 25-G of the Act is concerned, suffice would be to state here that Prabhu Ram (1.8.1998), Shashi Pal (6.4.1999), Roshani Devi (4.7.1999), Mamta Devi (6.4.2000), Inder Singh (1.1.2000) and Hans Raj (6.4.2000) were engaged between 1998 to 2003. In 2004, one Pardeep Kumar s/o Bahadur Singh was appointed on 23.11.2007, Lekh Raj s/o Ram Saran was appointed on 11/2004 and Satya Devi was engaged on 27.1.2011 but no opportunity was given to petitioner for reemployment which violates the provisions of Section 25-H of the Act. Close scrutiny of the petitioner in cross-examination would reveal that principle of 'Last come First go' was not followed for all the workmen appointed in between 1998 to 2004 whereas petitioner had been retrenched in 1999 and thereafter several persons were engaged in service but petitioner has not given any opportunity for reemployment. Since the persons mentioned in para 4 of claim petition as well as affidavit of petitioner Ex. PW1/A had been appointed by 1998 to 1999 provisions of Section 25-G of the Act could not be stated to have been violated. Be it noticed that Pardeep Kumar, Lekh Raj & Satya Devi had been appointed in 2007, 2004 and 2011 respectively. It is pertinent to mention to state here that when persons mentioned in para no. 5 of the claim petition were engaged and petitioner was not given offered for reemployment which manifestly violates the provisions of Section 25-H of the Act. From evidence, it is evidently clear that after termination of petitioner he was available for job who was not appointed however some persons fresh were allowed to join in service. As such, which is clearly violation of Section 25-H of the Act.

15. Ld. counsel for the petitioner has contended with vehemence that petitioner be treated in continuous service for eight years and for said reason the left period after July, 1999 be treated as regular period. It is not understood as to how petitioner claim this benefit as petitioner never worked with the respondent/department after his termination as well as there is no adequate evidence on record suggesting that petitioner had represented the respondent/department after his termination, although petitioner had issued demand notice i.e. 02.2.2013 after about 13 years and thus judgment of Hon'ble High Court reported in **2012 (132) FLR 528 (SC)** titled as **H.S. Rajashekara and State Bank of Mysore and another** does not come to the rescue of the petitioner. Therefore, the entire period cannot be treated in service. As stated above that petitioner remained out of job after his termination but there is nothing authenticated in evidence suggesting that he remained without earning and petitioner as PW1 has nowhere stated that he had opted out for job when terminated from service. As such, it is held that after his termination he was not in government job and cross-examination of PW1 reveals that he had not been paid retrenchment compensation and notice at the time of retrenchment. Since the respondent had failed to prove on record any seniority list by which it would be stated that persons who were junior to petitioner were retained in service whereas petitioner who was senior to persons mentioned and thus respondent had clearly violated Section 25-G of Industrial Disputes Act. In view of ratio of judgment of Hon'ble Apex Court reported in **AIR 2015 SC 1373** titled as **Mackinnon Machenzie & Company Ltd. vs. Mackinnon Employees Union** which mandatorily requires the employer to circulate seniority list as prepared. There is no iota of evidence on record remotely suggesting that respondent had provided seniority list of daily waged workers. As such, plea of petitioner that he was ignored and new hands were allowed to join is to be accepted. In view of foregoing discussions, respondent is held to have violated the provisions of Section 25-F and 25-H of the Act whereas the petitioner has failed to prove violation of provisions of Section 25-G of the Industrial Disputes Act.

16. Ld. Authorized Representative/counsel for petitioner has placed reliance of judgment of Hon'ble Apex Court reported in **2016 (151) FLR 1039** titled as **Rashtriya Colliery Mazdoor**

Sangh and Employers in Relation to Management of Kenduahih Colliery of M/S BCCL and Ors., in which Hon'ble Apex Court has awarded compensation of Rs.4 lakh to each workman. Similarly, reliance has placed on judgment of Hon'ble High Court of Punjab & Haryana reported in **2014 LLR 967** titled as **Deshsewak Foundry vs. Presiding Officer, Labour Court, Gurdaspur & Ors.**, in which compensation of Rs.5 lakh was awarded. In another judgment of Hon'ble High Court of Rajasthan, Jaipur Bench reported in **2017 (152) FLR 206**, titled as **Youth Co-ordinator, Nehru Yuva Kendra and Labour Court No.2, Jaipur and Anr.** in which compensation of Rs.2 lakh was granted to the workman who had merely worked for two years. Thus, above said judgments disclosing awarding larger amount of compensation which the claimant/petitioner has prayed for. Id. Dy. D.A. for State has relied upon judgment of **Assistant Engineer Rajasthan Development Corporation and another vs. Geetam Singh** reported in **2013 (136) FLR 893 (SC)**, in which various criteria to be looked by the Hon'ble Apex Court in awarding compensation. It has been held that before exercising its judicial discretion, the Labour Court has to keep in view all relevant factors including the mode and manner of appointment, nature of employment, length of service, the ground on which termination has been set aside and the delay in raising industrial dispute before grant of relief in an industrial dispute.

17. Since no straight-jacket formula can be applied for determining compensation as it is to be awarded on the basis of facts of case. In **2014 LLR 967** Hon'ble High Court of Punjab & Haryana had awarded compensation of Rs.5 lac to claimant petitioner who was litigating for past 30 years. Similarly, in **2016 (151) FLR 1039** Hon'ble Apex Court awarded compensation to each worker of Rs.4 lacs. It was observed that many of the workmen were at age of retirement and that nearly 27 years had elapsed since the time of retrenchment. Moreover, the workers who were awarded compensation of Rs.4 lac belonged to skilled category of Tyndals. As such, judgment relied upon by Id. counsel/Authorized Representative for petitioner does not apply to present case rather applying the criteria laid down by Hon'ble Apex Court in **Geetam Singh's case 2013 (136) FLR 893 (SC)** has been followed and applied.

18. Id. counsel representing respondent department has also contended with vehemence that claim petition is barred by limitation on account of delay and laches. It has been pointed that termination of petitioner in this case took place in the month of July, 1999 and the industrial dispute was raised after several years of retrenchment. Repudiating the argument by Id. counsel, Id. AR for the petitioner has placed reliance upon judgment reported in **2007 LHLJ 903 Hon'ble High Court of H.P. (Bhatag Ram's case)** in which it has been held that delay in raising dispute may be considered by court at the time of granting final relief however in various other judgments even longer delay has been condoned. In **Divisional Manager, HPFC & another vs. Garibu Ram, Latest HLJ 2007 (HP) 1160**, delay of more than 10 years was condoned besides Hon'ble High Court has held that principle of Limitation Act is not applicable to the industrial dispute. Similar view was taken by Hon'ble Apex Court in **Ajayab Singh vs. Sirhind Co-operative Marketing cum-Processing Society Limited and Another, (1999) 6 SCC 82** in which it has been held that the principle of Limitation Act, 1963 did not apply to the proceeding under the Industrial Disputes Act.

19. Applying the ratio of judgment above stated and that petitioner had rendered service for **two years** who was non-skilled worker ageing 42 years when his services were illegally terminated without notice and not likely to get government job at this age and had factually worked for 367 days when he had already completed 240 days entitling him protection under Section 25-F of Industrial Disputes Act however demand notice was issued after a period of 14 years by the petitioner, a lump-sum compensation of Rs.1,10,000/- (Rupees one lakh ten thousand only) would be a appropriate relief to the petitioner in lieu of back wages, seniority, past service benefits as well as other consequential service benefits. It is further made clear that amount of compensation shall be paid within four months from the date of Award failing which the petitioner would be entitled for interest @ 9% per annum from date of Award till its realization. Issues no. 1, 2 and 3 are answered accordingly.

ISSUE NO. 4

20. On the plea of non-maintainability of the claim petition under Section 10 of the Industrial Disputes Act, Id. Dy. D.A. representing respondent department has failed to allege in reply in what manner petition is not maintainable. Thus, vague plea merits rejection outright. Otherwise also, from pleadings and evidence on record, no inference of claim petition being not maintainable could be raised against claimant/petitioner. This issue is decided in favour of petitioner and against the respondent.

RELIEF

21. As sequel to my findings on foregoing issues, the respondent is hereby directed to pay the compensation of Rs.1,10,000/- (Rupees one lakh ten thousand only) to the petitioner in lieu of the back wages, seniority, past service benefits as well as the other consequential service benefits. Amount of compensation so awarded shall be paid by the respondent to the petitioner within four months from today failing which the respondent shall be liable to pay the interest @ 9% per annum on the said amount from the date of award till the date of its realization. In the peculiar circumstances of the case, the parties are left to bear their own costs.

22. The reference is answered in the aforesaid terms.

23. A copy of this Award be sent to the appropriate Government for publication in the official gazette.

24. File, after due completion be consigned to the Record Room.

Announced in the open Court today this 28th day of February, 2017.

(K.K. SHARMA),
Presiding Judge,
Labour Court-cum-Industrial Tribunal,
Kangra at Dharamshala, H.P.

IN THE COURT OF K. K. SHARMA, PRESIDING JUDGE, LABOUR COURT-CUM-INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA (HP)

Ref No. : 538/2015

Date of Institution : 04.12.2015

Date of Decision : 28.02.2017

Shri Nek Ram s/o Shri Finju Ram, r/o Village Roh, P.O. Baroti, Tehsil Sarkaghat, District Mandi, H.P. *...Petitioner.*

Versus

Executive Engineer, H.P.P.W.D. Division, Dharampur, Tehsil Sarkaghat, District Mandi, H.P. *...Respondent.*

Reference under Section 10 (1) of the Industrial Disputes Act, 1947.

For the Petitioner : Sh. N.L. Kaundal, AR

: Sh. Vijay Kaundal, Adv.

For the Respondent : Sh. Sanjeev Singh Rana, Dy. D.A.

AWARD

The reference given below has been received from the appropriate Government for adjudication:

“Whether the industrial dispute raised by the worker Shri Nek Ram s/o Shri Finju Ram, r/o Village Roh, P.O. Baroti, Tehsil Sarkaghat, District Mandi, H.P. before the Executive Engineer, H.P.P.W.D. Division Dharampur, District Mandi, H.P. vide demand notice dated 02.12.2013 regarding his alleged illegal termination of services during year, 2000 suffers from delay and latches? If not, Whether termination of services of Shri Nek Ram s/o Shri Finju Ram, r/o Village Roh, P.O. Baroti, Tehsil Sarkaghat, District Mandi, H.P. by the Executive Engineer, H.P.P.W.D. Division Dharampur, District Mandi, H.P. during year, 2000 without complying the provisions of the Industrial Disputes Act, 1947, is legal and justified? If not, what amount of back wages, seniority, past service benefits and compensation the above aggrieved workman is entitled to from the above employer?”

2. On receipt of reference from appropriate government, notices were issued to the parties in pursuance to which claimant/petitioner has filed statement of claim.

3. Brief facts as stipulated in the claim petition revealed that petitioner had been engaged by respondent on daily waged basis on muster roll as beldar w.e.f. July, 1998 where he continued to work upto the year 2000 who had completed 240 days. Averments made in the claim petition further revealed that services of the petitioner had unlawfully terminated by the respondent vide verbal order in the year 2000 without prior permission and one month's notice and retrenchment compensation as envisaged under Section 25-F of the Industrial Disputes Act, 1947 (hereinafter referred to as 'the Act' for brevity). It is alleged that respondent had violated the provisions of Section 25-F of the Act. It further transpires from between 2000 to 2005, respondent/department had terminated the services of more than 2000 daily waged workers who were engaged by the respondent in Dharampur Division from time to time without any purposes. Not only this, the principle of 'Last come First go' was not followed by the respondent as some juniors namely S/Sh. Prabhu Ram (1.8.1998), Shasi Pal (6.4.1999) and Roshani Devi (4.7.1999) have been retained in service whereas the services of petitioner had been dispensed with. The grievance of petitioner further revealed that after termination of services of petitioner so many new hands had been engaged by the respondent/department, the names of persons subsequent Mamta Devi on 6.4.2000, Inder Singh on 1.12.2003, Pradeep Kumar on 23.11.2007, Lekh Raj on 11/2004 and Satya Devi on 27.1.2011 but petitioner had not given any opportunity of reemployment by the respondent establishing violation of provisions of Section 25-H of the Act. Feeling aggrieved the action of respondent in terminating the services of petitioner he raised industrial dispute vide demand notice dated 11.4.2009 copy of the same was forwarded to Labour Officer, Mandi for further necessary action. It is alleged that Labour Officer, Mandi could not be resolved the dispute and failure report under Section 12(4) of the Industrial Disputes Act was made and the matter was referred to appropriate government i.e. Labour Commissioner who declined to refer the case of petitioner for adjudication. In pursuance to which the petitioner had approached the Hon'ble High Court of H.P. by filing CWP no.2933/2015 which had been decided on 2.7.2015 directed the Labour

Commissioner to make reference to the Labour Court. The dispute stated to have been not filed on account of delay and moreover Hon'ble High Court of H.P. has condoned the delay of eight years in case of **Rajneet Singh vs. State of H.P. & Ors.** reported in **2015 (145) FLR 722**. The petitioner alleges that respondent in terminating the services of petitioner w.e.f. 2000 without complying with the necessary provisions of the Industrial Disputes Act, 1947 which was illegal and unjustified and against the mandatory provisions of the Act. Accordingly, prayed has been made to set aside the illegal termination order of petitioner directed the respondent to reinstate the petitioner with full back wages, seniority, continuity in service with all consequential benefits.

4. The respondent contested claim petition, filed reply inter-alia taken preliminary objections of maintainability, delay and laches. On merits admitted that petitioner was engaged as daily wager on 05/1998 and he intermittently worked upto August, 2000. It is alleged that petitioner has left the job of his own who had not completed 240 days in each calendar year. It is alleged that petitioner had left the job of his own sweet will and respondent/department had not violated any provisions of the Industrial Disputes Act. The plea of respondent remained that petitioner had abandoned the job at his own sweet will. It is maintained that petitioner had left the job prior to retrenchment of the other workers in the year February, 2004 and July, 2005 and therefore the question of any illegal act of respondent does not arise. It is also contended by the respondent that there is inordinate delay in raising industrial dispute. It is alleged that petitioner had left the job of his own sweet will who was never terminated by the respondent. Alleges that question of termination of the services of petitioner by the respondent does not arise. Delay in filing the claim petition is stated to be fatal to the case of petitioner and the petitioner raised his claim when other workers raised demand notice and that petitioner was gainfully employed as an agriculturist. Accordingly, petition was sought to be dismissed.

5. The petitioner filed rejoinder, reiterated his stand as maintained in the claim petition.

6. To prove his case, petitioner had examined himself as PW1 tendered/proved his affidavit under Order 18 Rule 4 CPC Ex. PW1/A, Ex. PW1/B copy of RTI information dated 13.11.2013, Ex. PW1/C copy of mandays chart of Sh. Shashi Kant. Smt. Neelam Kumari, Clerk in the office of The E.E. HPPWD Hamirpur examined as PW2 tendered/proved Ex. P1 copy of regular appointment order of Sanjay Kumar and mandays chart of Ex. P2 and closed evidence. On the other hand, repudiating the evidence led by the petitioner, respondent examined RW1 Shri Sudhir Mittal, the then Executive Engineer, HPPWD Division Dharampur as RW1 tendered/proved his affidavit Ex. RW1/A, mandays chart of petitioner Ex. RW1/B and closed the evidence.

7. I have heard the Id. Authorized Representative/counsel of petitioner and Id. Dy. D.A. representing respondent, gone through records of the case carefully relevant for disposed of this case.

8. From the contentions raised, following issues were framed on 05.4.2016 for determination:

1. Whether the industrial dispute raised by petitioner vide demand notice dated 2-12-2013 qua his termination of service during year, 2000 by respondent suffers from the vice of delay and laches as alleged? If so, its effect? ... *OPP*.
2. Whether termination of services of the petitioner by the respondent during year, 2000 is/was illegal and unjustified as alleged? ... *OPP*.
11. If issue no.1 or issue no.2 or both are proved in affirmative, to what service benefits the petitioner is entitled to? ... *OPP*.

12. Whether the claim petition is not maintainable in the present form? ...OPR.

Relief.

9. For the reasons detailed here under, my findings on the above issues are as follows:—

Issue No.1 : Discussed

Issue No.2 : Yes

Issue No.3 : Discussed

Issue No.4 : No

Relief. : Petition is partly allowed awarding compensation Rs.1,15,000/- per operative part of award.

REASONS FOR FINDINGS

ISSUES NO.1 TO 3

10. All these issues have been taken up together for discussion being interconnected which can be disposed of simultaneously without repetition of evidence.

11. It is pertinent to mention here that claim petition before this Court was filed by petitioner in which he has prayed for setting aside the retrenchment order in the year 2000 qua his illegal termination and sought direction to the effect that services of petitioner be treated as continuous service till date with full back wages. It has further been prayed that services of petitioner be regularized after completion of eight years of service on the basis of policy framed by the State Govt. with all consequential benefits. Not only this, petitioner also prayed that his case may also be considered for engagement in service as per policy framed by the State Govt. and to another relief petitioner is entitled.

12. A bare glance at claim petition would reveal that petitioner was appointed as daily wage basis with the respondent in the month of July, 1998 on muster roll basis as beldar who continued to work till 2000 when his services were terminated without paying any retrenchment compensation under Section 25-F of the Act. It is claimed that petitioner had completed more than 240 days in each calendar prior to his termination and that while retrenching the services of petitioner principle of 'Last come First go' was not followed as Prabhu Ram (1.8.1998), Shasi Pal (6.4.1999), Roshani Devi (4.7.1999), Mamta Devi (6.4.2000), Inder Singh (1.1.2000) and Hans Raj (6.4.2000) were retained in service and thus the provisions of Section 25-G of the Act was not followed by the respondent. Mandays chart Ex. RW1/B on record reveals that petitioner had worked for 195 days in the year 1998, 351 days in 1999 and 220 days in 2000. Even if we look at the mandays chart, this would show that immediately preceding his termination petitioner has factually worked for 220 days and not 240 days and therefore provisions of Section 25-F of the Act are not applicable and in that situation respondent would not be required to either issue notice envisaged under Section 25-F of the Act or to pay wages in lieu thereof.

13. In so far as plea of abandonment raised by respondent is concerned, the same merits rejection in view of the fact that respondent had failed to produce any record by which it could be established that whenever petitioner absented from his duty, respondent had not issued any notice or letter. On this point respondent as RW1 has specifically admitted that whenever petitioner

abandoned the job, no notice had been issued. RW1 specifically admitted that no departmental inquiry was initiated against petitioner even after the year 2000. No reason whatsoever has been assigned for such any action or omission on the part of respondent in not initiating any departmental proceedings or making correspondence calling upon the petitioner to join service. This prima facie belies the stand taken by the respondent as abandonment has to be proved like any other fact in issue. As such, in absence of any specific and reliable evidence led by respondent, it would be unsafe to hold that respondent had established plea of abandonment. Hence, violation of Section 25-F of the Act has not been proved by the petitioner.

14. In so far as violation of provisions of Section 25-G of the Act is concerned, suffice would be to state here that Prabhu Ram (1.8.1998), Shashi Pal (6.4.1999), Roshani Devi (4.7.1999), Mamta Devi (6.4.2000), Inder Singh (1.1.2000) and Hans Raj (6.4.2000) were engaged between 1998 to 2003. In 2004, one Pardeep Kumar s/o Bahadur Singh was appointed on 23.11.2007, Lekh Raj s/o Ram Saran was appointed on 11/2004 and Satya Devi was engaged on 27.1.2011 but no opportunity was given to petitioner for reemployment which violates the provisions of Section 25-H of the Act. Close scrutiny of the petitioner in cross-examination would reveal that principle of 'Last come First go' was not followed for all the workmen appointed in between 1998 to 2004 whereas petitioner had been retrenched in 2000 and thereafter several persons were engaged in service but petitioner has not given any opportunity for reemployment. Since the persons mentioned in para 4 of claim petition as well as affidavit of petitioner Ex. PW1/A had been appointed by 1998 to 1999 provisions of Section 25-G of the Act could not be stated to have been violated. Be it noticed that Pardeep Kumar, Lekh Raj & Satya Devi had been appointed in 2007, 2004 and 2011 respectively. It is pertinent to mention to state here that when persons mentioned in para no. 5 of the claim petition were engaged and petitioner was not given offered for reemployment which manifestly violates the provisions of Section 25-H of the Act. From evidence, it is evidently clear that after termination of petitioner he was available for job who was not appointed however some persons fresh were allowed to join in service. As such, which is clearly violation of Section 25-H of the Act.

15. Ld. counsel for the petitioner has contended with vehemence that petitioner be treated in continuous service for eight years and for said reason the left period after 2000 be treated as regular period. It is not understood as to how petitioner claim this benefit as petitioner never worked for 240 days in any 12 months preceding termination and thus judgment of Hon'ble High Court reported in **2012 (132) FLR 528 (SC)** titled as **H.S. Rajashekara and State Bank of Mysore and another** does not come to the rescue of the petitioner. Since 240 days were never completed in a year by the petitioner, it could not be construed in any manner that termination of petitioner was illegal. Therefore, the entire period cannot be treated in service. As stated above that petitioner remained out of job after his termination but there is nothing authenticated in evidence suggesting that he remained without earning and petitioner as PW1 has nowhere stated that he had opted out for job when terminated from service. As such, it is held that after his termination he was not in government job and cross-examination of PW1 reveals that he had not been paid retrenchment compensation and notice at the time of retrenchment. Since the respondent had failed to prove on record any seniority list by which it would be stated that persons who were junior to petitioner were retained in service whereas petitioner who was senior to persons mentioned and thus respondent had clearly violated Section 25-G of Industrial Disputes Act. In view of ratio of judgment of Hon'ble Apex Court reported in **AIR 2015 SC 1373** titled as **Mackinnon Mackenzie & Company Ltd. vs. Mackinnon Employees Union** which mandatorily requires the employer to circulate seniority list as prepared. There is no iota of evidence on record remotely suggesting that respondent had provided seniority list of daily waged workers. As such, plea of petitioner that he was ignored and new hands were allowed to join is to be accepted. In view of foregoing discussions, respondent is held to have violated the provisions of Section 25-H of the Act whereas the petitioner has failed to prove violation of provisions of Section 25-F and 25-G of the Industrial Disputes Act.

16. Ld. Authorized Representative/counsel for petitioner has placed reliance of judgment of Hon'ble Apex Court reported in **2016 (151) FLR 1039** titled as **Rashtriya Colliery Mazdoor Sangh and Employers in Relation to Management of Kenduahih Colliery of M/S BCCL and Ors.**, in which Hon'ble Apex Court has awarded compensation of Rs.4 lakh to each workman. Similarly, reliance has placed on judgment of Hon'ble High Court of Punjab & Haryana reported in **2014 LLR 967** titled as **Deshsewak Foundry vs. Presiding Officer, Labour Court, Gurdaspur & Ors.**, in which compensation of Rs.5 lakh was awarded. In another judgment of Hon'ble High Court of Rajasthan, Jaipur Bench reported in **2017 (152) FLR 206**, titled as **Youth Co-ordinator, Nehru Yuva Kendra and Labour Court No.2, Jaipur and Anr.** in which compensation of Rs.2 lakh was granted to the workman who had merely worked for two years. Thus, above said judgments disclosing awarding larger amount of compensation which the claimant/petitioner has prayed for. Ld. Dy. D.A. for State has relied upon judgment of **Assistant Engineer Rajasthan Development Corporation and another vs. Geetam Singh** reported in **2013 (136) FLR 893 (SC)**, in which various criteria to be looked by the Hon'ble Apex Court in awarding compensation. It has been held that before exercising its judicial discretion, the Labour Court has to keep in view all relevant factors including the mode and manner of appointment, nature of employment, length of service, the ground on which termination has been set aside and the delay in raising industrial dispute before grant of relief in an industrial dispute.

17. Since no straight-jacket formula can be applied for determining compensation as it is to be awarded on the basis of facts of case. In **2014 LLR 967** Hon'ble High Court of Punjab & Haryana had awarded compensation of Rs.5 lac to claimant petitioner who was litigating for past 30 years. Similarly, in **2016 (151) FLR 1039** Hon'ble Apex Court awarded compensation to each worker of Rs.4 lacs. It was observed that many of the workmen were at age of retirement and that nearly 27 years had elapsed since the time of retrenchment. Moreover, the workers who were awarded compensation of Rs.4 lac belonged to skilled category of Tyndals. As such, judgment relied upon by ld. counsel/Authorized Representative for petitioner does not apply to present case rather applying the criteria laid down by Hon'ble Apex Court in **Geetam Singh's case 2013 (136) FLR 893 (SC)** has been followed and applied.

18. Ld. counsel representing respondent department has also contended with vehemence that claim petition is barred by limitation on account of delay and laches. It has been pointed that termination of petitioner in this case took place in the year 2000 and the industrial dispute was raised after several years of retrenchment. Repudiating the argument by ld. counsel, ld. AR for the petitioner has placed reliance upon judgment reported in **2007 LHLJ 903 Hon'ble High Court of H.P. (Bhatag Ram's case)** in which it has been held that delay in raising dispute may be considered by court at the time of granting final relief however in various other judgments even longer delay has been condoned. In **Divisional Manager, HPFC & another vs. Garibu Ram, Latest HLJ 2007 (HP) 1160**, delay of more than 10 years was condoned besides Hon'ble High Court has held that principle of Limitation Act is not applicable to the industrial dispute. Similar view was taken by Hon'ble Apex Court in **Ajayab Singh vs. Sirhind Co-operative Marketing-cum-Processing Society Limited and Another, (1999) 6 SCC 82** in which it has been held that the principle of Limitation Act, 1963 did not apply to the proceeding under the Industrial Disputes Act.

19. Applying the ratio of judgment above stated and that petitioner had rendered service for **three years** who was non-skilled worker ageing 38 years when his services were illegally terminated without notice and not likely to get government job at this age and had factually worked for 766 days when he had already completed 240 days entitling him protection under Section 25-F of Industrial Disputes Act however demand notice was issued after a period of 13 years by the petitioner, a lump-sum compensation of Rs.1,15,000/- (Rupees one lakh fifteen thousand only) would be a appropriate relief to the petitioner in lieu of back wages, seniority, past service benefits

as well as other consequential service benefits. It is further made clear that amount of compensation shall be paid within four months from the date of Award failing which the petitioner would be entitled for interest @ 9% per annum from date of Award till its realization. Issues no. 1, 2 and 3 are answered accordingly.

ISSUE NO.4

20. On the plea of non-maintainability of the claim petition under Section 10 of the Industrial Disputes Act, Id. Dy. D.A. representing respondent department has failed to allege in reply in what manner petition is not maintainable. Thus, vague plea merits rejection outright. Otherwise also, from pleadings and evidence on record, no inference of claim petition being not maintainable could be raised against claimant/petitioner. This issue is decided in favour of petitioner and against the respondent.

RELIEF

21. As sequel to my findings on foregoing issues, the respondent is hereby directed to pay the compensation of Rs.1,15,000/- (Rupees one lakh fifteen thousand only) to the petitioner in lieu of the back wages, seniority, past service benefits as well as the other consequential service benefits. Amount of compensation so awarded shall be paid by the respondent to the petitioner within four months from today failing which the respondent shall be liable to pay the interest @ 9% per annum on the said amount from the date of award till the date of its realization. In the peculiar circumstances of the case, the parties are left to bear their own costs.

22. The reference is answered in the aforesaid terms.

23. A copy of this Award be sent to the appropriate Government for publication in the official gazette.

24. File, after due completion be consigned to the Record Room.

Announced in the open Court today this 28th day of February, 2017.

(K. K. SHARMA),
Presiding Judge,
Labour Court-cum-Industrial Tribunal,
Kangra at Dharamshala, H.P.

**IN THE COURT OF K.K. SHARMA, PRESIDING JUDGE, LABOUR COURT-CUM-
INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA (HP)**

Ref No. : 535/2015

Date of Institution : 04.12.2015

Date of Decision : 28.02.2017

Shri Munshi Ram s/o Shri Relu Ram, r/o Village Kumharda, P.O. Hyun Pehad, Tehsil Sarkaghat, District Mandi, H.P.Petitioner.

Versus

Executive Engineer, H.P.P.W.D. Division, Dharampur, Tehsil Sarkaghat, District Mandi, H.P.Respondent.

Reference under Section 10 (1) of the Industrial Disputes Act, 1947.

For the Petitioner : Sh. N.L. Kaundal, AR
: Sh. Vijay Kaundal, Adv.

For the Respondent : Sh. Sanjeev Singh Rana, Dy. D.A.

AWARD

The reference given below has been received from the appropriate Government for adjudication:

“Whether the industrial dispute raised by the worker Shri Munshi Ram S/o Shri Relu Ram, R/O Village Kumharda, P.O. Hyun Peah, Tehsil Sarkaghat, District Mandi, H.P. before the Executive Engineer, H.P.P.W.D. Division Dharampur, District Mandi, H.P. vide demand notice dated 22.01.2013 regarding his alleged illegal termination of services during year, 2001 suffers from delay and latches? If not, Whether termination of services of Shri Munshi Ram S/o Shri Relu Ram, R/O Village Kumharda, P.O. Hyun Peah, Tehsil Sarkaghat, District Mandi, H.P. by the Executive Engineer, H.P.P.W.D. Division Dharampur, District Mandi, H.P. during year, 2001, without complying the provisions of the Industrial Disputes Act, 1947, is legal and justified? If not, what amount of back wages, seniority, past service benefits and compensation the above aggrieved workman is entitled to from the above employer?”

2. On receipt of reference from appropriate government, notices were issued to the parties in pursuance to which claimant/petitioner has filed statement of claim.

3. Brief facts as stipulated in the claim petition revealed that petitioner had been engaged by respondent on daily waged basis on muster roll as beldar w.e.f. 10.7.1998 where he continued to work upto the year 2001 who had completed 240 days. Averments made in the claim petition further revealed that services of the petitioner had unlawfully terminated by the respondent vide verbal order in the year 2001 without prior permission and one month's notice and retrenchment compensation as envisaged under Section 25-F of the Industrial Disputes Act, 1947 (hereinafter referred to as 'the Act' for brevity). It is alleged that respondent had violated the provisions of Section 25-F of the Act. It further transpires from between 2000 to 2005, respondent/department had terminated the services of more than 2000 daily waged workers who were engaged by the respondent in Dharampur Division from time to time without any purposes. Not only this, the principle of 'Last come First go' was not followed by the respondent as some juniors namely S/Sh. Prabhu Ram (1.8.1998), Shasi Pal (6.4.1999) and Roshani Devi (4.7.1999) have been retained in service whereas the services of petitioner had been dispensed with. The grievance of petitioner further revealed that after termination of services of petitioner so many new hands had been engaged by the respondent/department, the names of persons subsequent Mamta Devi on 6.4.2000, Inder Singh on 1.12.2003, Pradeep Kumar on 23.11.2007, Lekh Raj on 11/2004 and Satya Devi on 27.1.2011 but petitioner had not given any opportunity of reemployment by the respondent establishing violation of provisions of Section 25-H of the Act. Feeling aggrieved the action of respondent in terminating the services of petitioner he raised industrial dispute vide demand notice dated 22.1.2013 copy of the same was forwarded to Labour Officer, Mandi for further necessary action. It is alleged that Labour Officer, Mandi could not be resolved the dispute and failure report under Section 12(4) of the Industrial Disputes Act was made and the matter was referred to

appropriate government i.e. Labour Commissioner who declined to refer the case of petitioner for adjudication. In pursuance to which the petitioner had approached the Hon'ble High Court of H.P. by filing CWP no.3603/2015 which had been decided on 1.9.2015 directed the Labour Commissioner to make reference to the Labour Court. The dispute stated to have been not filed on account of delay and moreover Hon'ble High Court of H.P. has condoned the delay of eight years in case of **Rajneet Singh vs. State of H.P. & Ors.** reported in **2015 (145) FLR 722**. The petitioner alleges that respondent in terminating the services of petitioner w.e.f. 2001 without complying with the necessary provisions of the Industrial Disputes Act, 1947 which was illegal and unjustified and against the mandatory provisions of the Act. Accordingly, prayed has been made to set aside the illegal termination order of petitioner directed the respondent to reinstate the petitioner with full back wages, seniority, continuity in service with all consequential benefits.

4. The respondent contested claim petition, filed reply inter-alia taken preliminary objections of maintainability, delay and laches. On merits admitted that petitioner was engaged as daily wager on 01/1999 and he intermittently worked upto April, 1999. It is alleged that petitioner has left the job of his own who had not completed 240 days in each calendar year. It is alleged that petitioner had left the job of his own sweet will and respondent/department had not violated any provisions of the Industrial Disputes Act. The plea of respondent remained that petitioner had abandoned the job at his own sweet will. It is maintained that petitioner had left the job prior to retrenchment of the other workers in the year February, 2004 and July, 2005 and therefore the question of any illegal act of respondent does not arise. It is also contended by the respondent that there is inordinate delay in raising industrial dispute. It is alleged that petitioner had left the job of his own sweet will who was never terminated by the respondent. Alleges that question of termination of the services of petitioner by the respondent does not arise. Delay in filing the claim petition is stated to be fatal to the case of petitioner and the petitioner raised his claim when other workers raised demand notice and that petitioner was gainfully employed as an agriculturist. Accordingly, petition was sought to be dismissed.

5. The petitioner filed rejoinder, reiterated his stand as maintained in the claim petition.

6. To prove his case, petitioner had examined himself as PW1 tendered/proved his affidavit under Order 18 Rule 4 CPC Ex. PW1/A, Ex. PW1/B copy of RTI information dated 13.11.2013, Ex. PW1/C copy of mandays chart of Sh. Shashi Kant. Smt. Neelam Kumari, Clerk in the office of The E.E. HPPWD Hamirpur examined as PW2 tendered/proved Ex. P1 copy of regular appointment order of Sanjay Kumar and mandays chart of Ex. P2 and closed evidence. On the other hand, repudiating the evidence led by the petitioner, respondent examined RW1 Shri Sudhir Mittal, the then Executive Engineer, HPPWD Division Dharampur as RW1 tendered/proved his affidavit Ex. RW1/A, mandays chart of petitioner Ex. RW1/B and closed the evidence.

7. I have heard the Id. Authorized Representative/counsel of petitioner and Id. Dy. D.A. representing respondent, gone through records of the case carefully relevant for disposed of this case.

8. From the contentions raised, following issues were framed on 05.4.2016 for determination:

1. Whether the industrial dispute raised by petitioner vide demand notice dated 22-01-2013 qua his termination of service during year, 2001 by respondent suffers from the vice of delay and laches as alleged? If so, its effect? ...*OPP*.
2. Whether termination of services of the petitioner by the respondent during year, 2001 is/was illegal and unjustified as alleged? ...*OPP*.

13. If issue no.1 or issue no.2 or both are proved in affirmative, to what service benefits the petitioner is entitled to? ...*OPP*.

14. Whether the claim petition is not maintainable in the present form? ...*OPR*.

Relief.

9. For the reasons detailed here under, my findings on the above issues are as follows:—

Issue No.1 : Discussed

Issue No.2 : Yes

Issue No.3 : Discussed

Issue No.4 : No

Relief. : Petition is partly allowed awarding compensation Rs.50,000/- per operative part of award.

REASONS FOR FINDINGS

ISSUES NO.1 TO 3

10. All these issues have been taken up together for discussion being interconnected which can be disposed of simultaneously without repetition of evidence.

11. It is pertinent to mention here that claim petition before this Court was filed by petitioner in which he has prayed for setting aside the retrenchment order in the year 2001 qua his illegal termination and sought direction to the effect that services of petitioner be treated as continuous service till date with full back wages. It has further been prayed that services of petitioner be regularized after completion of eight years of service on the basis of policy framed by the State Govt. with all consequential benefits. Not only this, petitioner also prayed that his case may also be considered for engagement in service as per policy framed by the State Govt. and to another relief petitioner is entitled.

12. A bare glance at claim petition would reveal that petitioner was appointed as daily wage basis with the respondent w.e.f. 10.7.1998 on muster roll basis as beldar who continued to work till 2001 when his services were terminated without paying any retrenchment compensation under Section 25-F of the Act. It is claimed that petitioner had completed more than 240 days in each calendar prior to his termination and that while retrenching the services of petitioner principle of 'Last come First go' was not followed as Prabhu Ram (1.8.1998), Shasi Pal (6.4.1999), Roshani Devi (4.7.1999), Mamta Devi (6.4.2000), Inder Singh (1.1.2000) and Hans Raj (6.4.2000) were retained in service and thus the provisions of Section 25-G of the Act was not followed by the respondent. Mandays chart Ex. RW1/B on record reveals that petitioner had worked for 26 days in the month of January 1999, 22 days in February 1999, 28 days in March 1999 and 17 days in April, 1999. Even if we look at the mandays chart, this would show that immediately preceding his termination petitioner has factually worked for 93 days and not 240 days and therefore provisions of Section 25-F of the Act are not applicable and in that situation respondent would not be required to either issue notice envisaged under Section 25-F of the Act or to pay wages in lieu thereof.

13. In so far as plea of abandonment raised by respondent is concerned, the same merits rejection in view of the fact that respondent had failed to produce any record by which it could be established that whenever petitioner absented from his duty, respondent had not issued any notice or letter. On this point respondent as RW1 has specifically admitted that whenever petitioner abandoned the job, no notice had been issued. RW1 specifically admitted that no departmental inquiry was initiated against petitioner even after April, 1999. No reason whatsoever has been assigned for such any action or omission on the part of respondent in not initiating any departmental proceedings or making correspondence calling upon the petitioner to join service. This prima facie belies the stand taken by the respondent as abandonment has to be proved like any other fact in issue. As such, in absence of any specific and reliable evidence led by respondent, it would be unsafe to hold that respondent had established plea of abandonment. Hence, violation of Section 25-F of the Act has not been proved by the petitioner.

14. In so far as violation of provisions of Section 25-G of the Act is concerned, suffice would be to state here that Prabhu Ram (1.8.1998), Shasi Pal (6.4.1999), Roshani Devi (4.7.1999), Mamta Devi (6.4.2000), Inder Singh (1.1.2000) and Hans Raj (6.4.2000) were engaged between 1998 to 2003. In 2004, one Pardeep Kumar s/o Bahadur Singh was appointed on 23.11.2007, Lekh Raj s/o Ram Saran was appointed on 11/2004 and Satya Devi was engaged on 27.1.2011 but no opportunity was given to petitioner for reemployment which violates the provisions of Section 25-H of the Act. Close scrutiny of the petitioner in cross-examination would reveal that principle of 'Last come First go' was not followed for all the workmen appointed in between 1998 to 2004 whereas petitioner had been retrenched in 1999 and thereafter several persons were engaged in service but petitioner has not given any opportunity for reemployment. Since the persons mentioned in para 4 of claim petition as well as affidavit of petitioner Ex. PW1/A had been appointed by 1998 to 1999 provisions of Section 25-G of the Act could not be stated to have been violated. Be it noticed that Pardeep Kumar, Lekh Raj & Satya Devi had been appointed in 2007, 2004 and 2011 respectively. It is pertinent to mention to state here that when persons mentioned in para no. 5 of the claim petition were engaged and petitioner was not given offered for reemployment which manifestly violates the provisions of Section 25-H of the Act. From evidence, it is evidently clear that after termination of petitioner he was available for job who was not appointed however some persons fresh were allowed to join in service. As such, which is clearly violation of Section 25-H of the Act.

15. Ld. counsel for the petitioner has contended with vehemence that petitioner be treated in continuous service for eight years and for said reason the left period after 1999 be treated as regular period. It is not understood as to how petitioner claim this benefit as petitioner never worked for 240 days in any 12 months preceding termination and thus judgment of Hon'ble High Court reported in **2012 (132) FLR 528 (SC)** titled as **H.S. Rajashekara and State Bank of Mysore and another** does not come to the rescue of the petitioner. Since 240 days were never completed in a year by the petitioner, it could not be construed in any manner that termination of petitioner was illegal. Therefore, the entire period cannot be treated in service. As stated above that petitioner remained out of job after his termination but there is nothing authenticated in evidence suggesting that he remained without earning and petitioner as PW1 has nowhere stated that he had opted out for job when terminated from service. As such, it is held that after his termination he was not in government job and cross-examination of PW1 reveals that he had not been paid retrenchment compensation and notice at the time of retrenchment. Since the respondent had failed to prove on record any seniority list by which it would be stated that persons who were junior to petitioner were retained in service whereas petitioner who was senior to persons mentioned and thus respondent had clearly violated Section 25-G of Industrial Disputes Act. In view of ratio of judgment of Hon'ble Apex Court reported in **AIR 2015 SC 1373** titled as **Mackinon Machenize & Company Ltd. vs. Mackinon Employees Union** which mandatorily requires the employer to circulate seniority list as prepared. There is no iota of evidence on record remotely suggesting that

respondent had provided seniority list of daily waged workers. As such, plea of petitioner that he was ignored and new hands were allowed to join is to be accepted. In view of foregoing discussions, respondent is held to have violated the provisions of Section 25-H of the Act whereas the petitioner has failed to prove violation of provisions of Section 25-F and 25-G of the Industrial Disputes Act.

16. Ld. Authorized Representative/counsel for petitioner has placed reliance on judgment of Hon'ble Apex Court reported in **2016 (151) FLR 1039** titled as **Rashtriya Colliery Mazdoor Sangh and Employers in Relation to Management of Kenduahih Colliery of M/S BCCL and Ors.**, in which Hon'ble Apex Court has awarded compensation of Rs.4 lakh to each workman. Similarly, reliance has placed on judgment of Hon'ble High Court of Punjab & Haryana reported in **2014 LLR 967** titled as **Deshsewak Foundry vs. Presiding Officer, Labour Court, Gurdaspur & Ors.**, in which compensation of Rs.5 lakh was awarded. In another judgment of Hon'ble High Court of Rajasthan, Jaipur Bench reported in **2017 (152) FLR 206**, titled as **Youth Co-ordinator, Nehru Yuva Kendra and Labour Court No.2, Jaipur and Anr.** in which compensation of Rs.2 lakh was granted to the workman who had merely worked for two years. Thus, above said judgments disclosing awarding larger amount of compensation which the claimant/petitioner has prayed for. Ld. Dy. D.A. for State has relied upon judgment of **Assistant Engineer Rajasthan Development Corporation and another vs. Geetam Singh** reported in **2013 (136) FLR 893 (SC)**, in which various criteria to be looked by the Hon'ble Apex Court in awarding compensation. It has been held that before exercising its judicial discretion, the Labour Court has to keep in view all relevant factors including the mode and manner of appointment, nature of employment, length of service, the ground on which termination has been set aside and the delay in raising industrial dispute before grant of relief in an industrial dispute.

17. Since no straight-jacket formula can be applied for determining compensation as it is to be awarded on the basis of facts of case. In **2014 LLR 967** Hon'ble High Court of Punjab & Haryana had awarded compensation of Rs.5 lac to claimant petitioner who was litigating for past 30 years. Similarly, in **2016 (151) FLR 1039** Hon'ble Apex Court awarded compensation to each worker of Rs.4 lacs. It was observed that many of the workmen were at age of retirement and that nearly 27 years had elapsed since the time of retrenchment. Moreover, the workers who were awarded compensation of Rs.4 lac belonged to skilled category of Tyndals. As such, judgment relied upon by Ld. counsel/Authorized Representative for petitioner does not apply to present case rather applying the criteria laid down by Hon'ble Apex Court in **Geetam Singh's case 2013 (136) FLR 893 (SC)** has been followed and applied.

18. Ld. counsel representing respondent department has also contended with vehemence that claim petition is barred by limitation on account of delay and laches. It has been pointed that termination of petitioner in this case took place on April, 1999 and the industrial dispute was raised after several years of retrenchment. Repudiating the argument by Ld. counsel, Ld. AR for the petitioner has placed reliance upon judgment reported in **2007 LHLJ 903 Hon'ble High Court of H.P. (Bhatag Ram's case)** in which it has been held that delay in raising dispute may be considered by court at the time of granting final relief however in various other judgments even longer delay has been condoned. In **Divisional Manager, HPFC & another vs. Garibu Ram, Latest HLJ 2007 (HP) 1160**, delay of more than 10 years was condoned besides Hon'ble High Court has held that principle of Limitation Act is not applicable to the industrial dispute. Similar view was taken by Hon'ble Apex Court in **Ajayab Singh vs. Sirhind Co-operative Marketing-cum-Processing Society Limited and Another, (1999) 6 SCC 82** in which it has been held that the principle of Limitation Act, 1963 did not apply to the proceeding under the Industrial Disputes Act.

19. Applying the ratio of judgment above stated and that petitioner had rendered service only for **four months** who was non-skilled worker ageing 41 years when his services were terminated and not likely to get government job at this age and had worked for 93 days who had failed to complete 240 days which could entitle him protection under Section 25-F of Industrial Disputes Act although demand notice was issued after a period of 14 years by the petitioner, a lump-sum compensation of Rs.50,000/- (Rupees fifty thousand only) would be a appropriate relief to the petitioner in lieu of back wages, seniority, past service benefits as well as other consequential service benefits. It is further made clear that amount of compensation shall be paid within four months from the date of Award failing which the petitioner would be entitled for interest @ 9% per annum from date of Award till its realization. Issues no. 1, 2 and 3 are answered accordingly.

ISSUE NO.4

20. On the plea of non-maintainability of the claim petition under Section 10 of the Industrial Disputes Act, Id. Dy. D.A. representing respondent department has failed to allege in reply in what manner petition is not maintainable. Thus, vague plea merits rejection outright. Otherwise also, from pleadings and evidence on record, no inference of claim petition being not maintainable could be raised against claimant/petitioner. This issue is decided in favour of petitioner and against the respondent.

RELIEF

21. As sequel to my findings on foregoing issues, the respondent is hereby directed to pay the compensation of Rs.50,000/- (Rupees fifty thousand only) to the petitioner in lieu of the back wages, seniority, past service benefits as well as the other consequential service benefits. Amount of compensation so awarded shall be paid by the respondent to the petitioner within four months from today failing which the respondent shall be liable to pay the interest @ 9% per annum on the said amount from the date of award till the date of its realization. In the peculiar circumstances of the case, the parties are left to bear their own costs.

22. The reference is answered in the aforesaid terms.

23. A copy of this Award be sent to the appropriate Government for publication in the official gazette.

24. File, after due completion be consigned to the Record Room.

Announced in the open Court today this 28th day of February, 2017.

(K. K. SHARMA),

Presiding Judge,

Labour Court-cum-Industrial Tribunal,

Kangra at Dharamshala, H.P.

IN THE COURT OF K.K. SHARMA, PRESIDING JUDGE, LABOUR COURT-CUM-INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA (HP)

Ref No. : 549/2015

Date of Institution : 04.12.2015

Date of Decision : 28.02.2017

Smt. Savitri Devi w/o Shri Roshan Lal, r/o Village Langehar, P.O. Guin, Tehsil Sarkaghat, District Mandi, H.P. ...*Petitioner.*

Versus

Executive Engineer, H.P.P.W.D. Division, Dharampur, Tehsil Sarkaghat, District Mandi, H.P. ...*Respondent.*

Reference under Section 10 (1) of the Industrial Disputes Act, 1947.

For the Petitioner : Sh. N.L. Kaundal, AR
: Sh. Vijay Kaundal, Adv.

For the Respondent : Sh. Sanjeev Singh Rana, Dy. D.A.

AWARD

The reference given below has been received from the appropriate Government for adjudication:

“Whether the industrial dispute raised by the worker Smt. Savitri Devi W/O Shri Roshan Lal, R/O Village Langehar, P.O. Guin, Tehsil Sarkaghat, District Mandi, H.P. before the Executive Engineer, H.P.P.W.D. Division Dharampur, District Mandi, H.P. vide demand notice dated 19-02-2013 regarding her alleged illegal termination of services during year, 2000 suffers from delay and latches? If not, Whether termination of services of Smt. Savitri Devi W/O Shri Roshan Lal, R/O Village Langehar, P.O. Guin, Tehsil Sarkaghat, District Mandi, H.P. by the Executive Engineer, H.P.P.W.D. Division Dharampur, District Mandi, H.P. during year, 2000, without complying the provisions of the Industrial Disputes Act, 1947, is legal and justified? If not, what amount of back wages, seniority, past service benefits and compensation the above aggrieved workman is entitled to from the above employer?”

2. On receipt of reference from appropriate government, notices were issued to the parties in pursuance to which claimant/petitioner has filed statement of claim

3. Brief facts as stipulated in the claim petition revealed that petitioner had been engaged by respondent on daily waged basis on muster roll as beldar w.e.f. 13.1.1999 where she continued to work upto year 2001 who had completed 240 days. Averments made in the claim petition further revealed that services of the petitioner had unlawfully terminated by the respondent vide verbal order in the year 2000 without prior permission and one month's notice and retrenchment compensation as envisaged under Section 25-F of the Industrial Disputes Act, 1947 (hereinafter referred to as 'the Act' for brevity). It is alleged that respondent had violated the provisions of Section 25-F of the Act. It further transpires from between 2000 to 2005, respondent/department had terminated the services of more than 2000 daily waged workers who were engaged by the respondent in Dharampur Division from time to time without any purposes. Not only this, the principle of 'Last come First go' was not followed by the respondent as some juniors namely S/Sh. Prabhu Ram (1.8.1998), Shasi Pal (6.4.1999) and Roshani Devi (4.7.1999) have been retained in service whereas the services of petitioner had been dispensed with. The grievance of petitioner further revealed that after termination of services of petitioner so many new hands had been engaged by the respondent/department, the names of persons subsequent Mamta Devi on 6.4.2000, Inder Singh on 1.12.2003, Pradeep Kumar on 23.11.2007, Lekh Raj on 11/2004 and Satya Devi on 27.1.2011 but petitioner had not given any opportunity of reemployment by the respondent

establishing violation of provisions of Section 25-H of the Act. Feeling aggrieved the action of respondent in terminating the services of petitioner she raised industrial dispute vide demand notice dated 19.2.2013 copy of the same was forwarded to Labour Officer, Mandi for further necessary action. It is alleged that Labour Officer, Mandi could not be resolved the dispute and failure report under Section 12(4) of the Industrial Disputes Act was made and the matter was referred to appropriate government i.e. Labour Commissioner who declined to refer the case of petitioner for adjudication. In pursuance to which the petitioner had approached the Hon'ble High Court of H.P. by filing CWP no.3613/2015 which had been decided on 1.9.2015 directed the Labour Commissioner to make reference to the Labour Court. The dispute stated to have been not filed on account of delay and moreover Hon'ble High Court of H.P. has condoned the delay of eight years in case of **Rajneet Singh vs. State of H.P. & Ors.** reported in **2015 (145) FLR 722**. The petitioner alleges that respondent in terminating the services of petitioner w.e.f. 2000 without complying with the necessary provisions of the Industrial Disputes Act, 1947 which was illegal and unjustified and against the mandatory provisions of the Act. Accordingly, prayed has been made to set aside the illegal termination order of petitioner directed the respondent to reinstate the petitioner with full back wages, seniority, continuity in service with all consequential benefits.

4. The respondent contested claim petition, filed reply inter-alia taken preliminary objections of maintainability, delay and laches. On merits admitted that petitioner was engaged as daily wager on 01/1999 and she intermittently worked upto September, 1999. It is alleged that petitioner has left the job of her own who had not completed 240 days in each calendar year. It is alleged that petitioner had left the job of her own sweet will and respondent/department had not violated any provisions of the Industrial Disputes Act. The plea of respondent remained that petitioner had abandoned the job at her own sweet will. It is maintained that petitioner had left the job prior to retrenchment of the other workers in the year February, 2004 and July, 2005 and therefore the question of any illegal act of respondent does not arise. It is also contended by the respondent that there is inordinate delay in raising industrial dispute. It is alleged that petitioner had left the job of her own sweet will who was never terminated by the respondent. Alleges that question of termination of the services of petitioner by the respondent does not arise. Delay in filing the claim petition is stated to be fatal to the case of petitioner and the petitioner raised her claim when other workers raised demand notice and that petitioner was gainfully employed as an agriculturist. Accordingly, petition was sought to be dismissed.

5. The petitioner filed rejoinder, reiterated his stand as maintained in the claim petition.

6. To prove her case, petitioner had examined herself as PW1 tendered/proved her affidavit under Order 18 Rule 4 CPC Ex. PW1/A, Ex. PW1/B copy of RTI information dated 13.11.2013, Ex. PW1/C copy of mandays chart of Sh. Shashi Kant and closed evidence. On the other hand, repudiating the evidence led by the petitioner, respondent examined RW1 Shri Sudhir Mittal, the then Executive Engineer, HPPWD Division Dharampur as RW1 tendered/proved his affidavit Ex. RW1/A, mandays chart of petitioner Ex. RW1/B and closed the evidence.

7. I have heard the ld. Authorized Representative/counsel of petitioner and ld. Dy. D.A. representing respondent, gone through records of the case carefully relevant for disposed of this case.

8. From the contentions raised, following issues were framed on 05.4.2016 for determination:

1. Whether the industrial dispute raised by petitioner vide demand notice dated 19-02-2013 qua her termination of service during year, 2000 by respondent suffers from the vice of delay and laches as alleged? If so, its effect? ...*OPP*.

2. Whether termination of services of the petitioner by the respondent during year, 2000 is/was illegal and unjustified as alleged? ...*OPP.*

15. If issue no.1 or issue no.2 or both are proved in affirmative, to what service benefits the petitioner is entitled to? ...*OPP.*

16. Whether the claim petition is not maintainable in the present form? ...*OPR.*

Relief.

9. For the reasons detailed here under, my findings on the above issues are as follows:—

Issue No.1 : Discussed

Issue No.2 : Yes

Issue No.3 : Discussed

Issue No.4 : No

Relief. : Petition is partly allowed awarding compensation Rs.1,00,000/- per operative part of award.

REASONS FOR FINDINGS

ISSUES NO.1 TO 3

10. All these issues have been taken up together for discussion being interconnected which can be disposed of simultaneously without repetition of evidence.

11. It is pertinent to mention here that claim petition before this Court was filed by petitioner in which she has prayed for setting aside the retrenchment order in the year 2000 qua her illegal termination and sought direction to the effect that services of petitioner be treated as continuous service till date with full back wages. It has further been prayed that services of petitioner be regularized after completion of eight years of service on the basis of policy framed by the State Govt. with all consequential benefits. Not only this, petitioner also prayed that her case may also be considered for engagement in service as per policy framed by the State Govt. and to another relief petitioner is entitled.

12. A bare glance at claim petition would reveal that petitioner was appointed as daily wage basis with the respondent w.e.f. 13.1.1999 on muster roll basis as beldar who continued to work till 2001 when her services were terminated without paying any retrenchment compensation under Section 25-F of the Act. It is claimed that petitioner had completed more than 240 days in each calendar prior to her termination and that while retrenching the services of petitioner principle of 'Last come First go' was not followed as Prabhu Ram (1.8.1998), Shasi Pal (6.4.1999), Roshani Devi (4.7.1999), Mamta Devi (6.4.2000), Inder Singh (1.1.2000) and Hans Raj (6.4.2000) were retained in service and thus the provisions of Section 25-G of the Act was not followed by the respondent. Mandays chart Ex. RW1/B on record reveals that petitioner had worked for 12 days in the month of January 1999, 24 days in February 1999, 23 days in March 1999, 19 days in April, 1999, 31 days in May, 1999, 30 days in June, 1999, 25 days in July, 1999, 31 days in August, 1999 and 25½ days in September, 1999. Even if we look at the mandays chart, this would show that immediately preceding her termination petitioner has factually worked for 223 ½ days and not 240

days and therefore provisions of Section 25-F of the Act are not applicable and in that situation respondent would not be required to either issue notice envisaged under Section 25-F of the Act or to pay wages in lieu thereof.

13. In so far as plea of abandonment raised by respondent is concerned, the same merits rejection in view of the fact that respondent had failed to produce any record by which it could be established that whenever petitioner absented from his duty, respondent had not issued any notice or letter. On this point respondent as RW1 has specifically admitted that whenever petitioner abandoned the job, no notice had been issued. RW1 specifically admitted that no departmental inquiry was initiated against petitioner even after September, 1999. No reason whatsoever has been assigned for such any action or omission on the part of respondent in not initiating any departmental proceedings or making correspondence calling upon the petitioner to join service. This prima facie belies the stand taken by the respondent as abandonment has to be proved like any other fact in issue. As such, in absence of any specific and reliable evidence led by respondent, it would be unsafe to hold that respondent had established plea of abandonment. Hence, violation of Section 25-F of the Act has not been proved by the petitioner.

14. In so far as violation of provisions of Section 25-G of the Act is concerned, suffice would be to state here that Prabhu Ram (1.8.1998), Shasi Pal (6.4.1999), Roshani Devi (4.7.1999), Mamta Devi (6.4.2000), Inder Singh (1.1.2000) and Hans Raj (6.4.2000) were engaged between 1998 to 2003. In 2004, one Pardeep Kumar s/o Bahadur Singh was appointed on 23.11.2007, Lekh Raj s/o Ram Saran was appointed on 11/2004 and Satya Devi was engaged on 27.1.2011 but no opportunity was given to petitioner for reemployment which violates the provisions of Section 25-H of the Act. Close scrutiny of the petitioner in cross-examination would reveal that principle of 'Last come First go' was not followed for all the workmen appointed in between 1998 to 2004 whereas petitioner had been retrenched in 2000 and thereafter several persons were engaged in service but petitioner has not given any opportunity for reemployment. Since the persons mentioned in para 4 of claim petition as well as affidavit of petitioner Ex. PW1/A had been appointed by 1998 to 2000 provisions of Section 25-G of the Act could not be stated to have been violated. Be it noticed that Pardeep Kumar, Lekh Raj & Satya Devi had been appointed in 2007, 2004 and 2011 respectively. It is pertinent to mention to state here that when persons mentioned in para no. 5 of the claim petition were engaged and petitioner was not given offered for reemployment which manifestly violates the provisions of Section 25-H of the Act. From evidence, it is evidently clear that after termination of petitioner she was available for job who was not appointed however some persons fresh were allowed to join in service. As such, which is clearly violation of Section 25-H of the Act.

15. Ld. counsel for the petitioner has contended with vehemence that petitioner be treated in continuous service for eight years and for said reason the left period after 1999 be treated as regular period. It is not understood as to how petitioner claim this benefit as petitioner never worked for 240 days in any 12 months preceding termination and thus judgment of Hon'ble High Court reported in **2012 (132) FLR 528 (SC)** titled as **H.S. Rajashekara and State Bank of Mysore and another** does not come to the rescue of the petitioner. Since 240 days were never completed in a year by the petitioner, it could not be construed in any manner that termination of petitioner was illegal. Therefore, the entire period cannot be treated in service. As stated above that petitioner remained out of job after her termination but there is nothing authenticated in evidence suggesting that she remained without earning and petitioner as PW1 has nowhere stated that she had opted out for job when terminated from service. As such, it is held that after her termination she was not in government job and cross-examination of PW1 reveals that she had not been paid retrenchment compensation and notice at the time of retrenchment. Since the respondent had failed to prove on record any seniority list by which it would be stated that persons who were junior to petitioner were retained in service whereas petitioner who was senior to persons mentioned and

thus respondent had clearly violated Section 25-G of Industrial Disputes Act. In view of ratio of judgment of Hon'ble Apex Court reported in **AIR 2015 SC 1373** titled as **Mackinon Machenize & Company Ltd. vs. Mackinon Employees Union** which mandatorily requires the employer to circulate seniority list as prepared. There is no iota of evidence on record remotely suggesting that respondent had provided seniority list of daily waged workers. As such, plea of petitioner that she was ignored and new hands were allowed to join is to be accepted. In view of foregoing discussions, respondent is held to have violated the provisions of Section 25-H of the Act whereas the petitioner has failed to prove violation of provisions of Section 25-F and 25-G of the Industrial Disputes Act.

16. Ld. Authorized Representative/counsel for petitioner has placed reliance of judgment of Hon'ble Apex Court reported in **2016 (151) FLR 1039** titled as **Rashtriya Colliery Mazdoor Sangh and Employers in Relation to Management of Kenduahih Colliery of M/S BCCL and Ors.**, in which Hon'ble Apex Court has awarded compensation of Rs.4 lakh to each workman. Similarly, reliance has placed on judgment of Hon'ble High Court of Punjab & Haryana reported in **2014 LLR 967** titled as **Deshsewak Foundry vs. Presiding Officer, Labour Court, Gurdaspur & Ors.**, in which compensation of Rs.5 lakh was awarded. In another judgment of Hon'ble High Court of Rajasthan, Jaipur Bench reported in **2017 (152) FLR 206**, titled as **Youth Co-ordinator, Nehru Yuva Kendra and Labour Court No.2, Jaipur and Anr.** in which compensation of Rs.2 lakh was granted to the workman who had merely worked for two years. Thus, above said judgments disclosing awarding larger amount of compensation which the claimant/petitioner has prayed for. Ld. Dy. D.A. for State has relied upon judgment of **Assistant Engineer Rajasthan Development Corporation and another vs. Geetam Singh** reported in **2013 (136) FLR 893 (SC)**, in which various criteria to be looked by the Hon'ble Apex Court in awarding compensation. It has been held that before exercising its judicial discretion, the Labour Court has to keep in view all relevant factors including the mode and manner of appointment, nature of employment, length of service, the ground on which termination has been set aside and the delay in raising industrial dispute before grant of relief in an industrial dispute.

17. Since no straight-jacket formula can be applied for determining compensation as it is to be awarded on the basis of facts of case. In **2014 LLR 967** Hon'ble High Court of Punjab & Haryana had awarded compensation of Rs.5 lac to claimant petitioner who was litigating for past 30 years. Similarly, in **2016 (151) FLR 1039** Hon'ble Apex Court awarded compensation to each worker of Rs.4 lacs. It was observed that many of the workmen were at age of retirement and that nearly 27 years had elapsed since the time of retrenchment. Moreover, the workers who were awarded compensation of Rs.4 lac belonged to skilled category of Tyndals. As such, judgment relied upon by ld. counsel/Authorized Representative for petitioner does not apply to present case rather applying the criteria laid down by Hon'ble Apex Court in **Geetam Singh's case 2013 (136) FLR 893 (SC)** has been followed and applied.

18. Ld. counsel representing respondent department has also contended with vehemence that claim petition is barred by limitation on account of delay and laches. It has been pointed that termination of petitioner in this case took place on September, 1999 and the industrial dispute was raised after several years of retrenchment. Repudiating the argument by ld. counsel, ld. AR for the petitioner has placed reliance upon judgment reported in **2007 LHLJ 903 Hon'ble High Court of H.P. (Bhatag Ram's case)** in which it has been held that delay in raising dispute may be considered by court at the time of granting final relief however in various other judgments even longer delay has been condoned. In **Divisional Manager, HPFC & another vs. Garibu Ram, Latest HLJ 2007 (HP) 1160**, delay of more than 10 years was condoned besides Hon'ble High Court has held that principle of Limitation Act is not applicable to the industrial dispute. Similar view was taken by Hon'ble Apex Court in **Ajayab Singh vs. Sirhind Co-operative Marketing-cum-Processing Society Limited and Another, (1999) 6 SCC 82** in which it has been held that

the principle of Limitation Act, 1963 did not apply to the proceeding under the Industrial Disputes Act.

19. Applying the ratio of judgment above stated and that petitioner had rendered service only for **nine months** who was female non-skilled worker ageing 34 years when her services were terminated and not likely to get government job at this age and had worked for 223 ½ days when she was about to complete 240 days entitling her protection under Section 25-F of Industrial Disputes Act and demand notice was issued after a period of 14 years by the petitioner, a lump-sum compensation of Rs.1,00,000/- (Rupees one lakh only) would be a appropriate relief to the petitioner in lieu of back wages, seniority, past service benefits as well as other consequential service benefits. It is further made clear that amount of compensation shall be paid within four months from the date of Award failing which the petitioner would be entitled for interest @ 9% per annum from date of Award till its realization. Issues no. 1, 2 and 3 are answered accordingly.

ISSUE NO. 4

20. On the plea of non-maintainability of the claim petition under Section 10 of the Industrial Disputes Act, Id. Dy. D.A. representing respondent department has failed to allege in reply in what manner petition is not maintainable. Thus, vague plea merits rejection outright. Otherwise also, from pleadings and evidence on record, no inference of claim petition being not maintainable could be raised against claimant/petitioner. This issue is decided in favour of petitioner and against the respondent.

RELIEF

21. As sequel to my findings on foregoing issues, the respondent is hereby directed to pay the compensation of Rs.1,00,000/- (Rupees one lakh only) to the petitioner in lieu of the back wages, seniority, past service benefits as well as the other consequential service benefits. Amount of compensation so awarded shall be paid by the respondent to the petitioner within four months from today failing which the respondent shall be liable to pay the interest @ 9% per annum on the said amount from the date of award till the date of its realization. In the peculiar circumstances of the case, the parties are left to bear their own costs.

22. The reference is answered in the aforesaid terms.

23. A copy of this Award be sent to the appropriate Government for publication in the official gazette.

24. File, after due completion be consigned to the Record Room.

Announced in the open Court today this 28h day of February, 2017.

(K.K. SHARMA),
Presiding Judge,
Labour Court-cum-Industrial Tribunal,
Kangra at Dharamshala, H.P.

**IN THE COURT OF K.K. SHARMA, PRESIDING JUDGE, LABOUR COURT-CUM-
INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA (HP)**

Ref No. : 540/2015

Date of Institution : 04.12.2015

Date of Decision : 28.02.2017

Smt. Reeta Devi w/o Shri Tek Chand, r/o Village Baral, P.O. Baroti, Tehsil Sarkaghat, District Mandi, H.P.*Petitioner.*

Versus

Executive Engineer, H.P.P.W.D. Division, Dharampur, Tehsil Sarkaghat, District Mandi, H.P.*Respondent.*

Reference under Section 10 (1) of the Industrial Disputes Act, 1947.

For the Petitioner : Sh. N.L. Kaundal, AR
: Sh. Vijay Kaundal, Adv.

For the Respondent : Sh. Sanjeev Singh Rana, Dy. D.A.

AWARD

The reference given below has been received from the appropriate Government for adjudication:

“Whether the industrial dispute raised by the worker Smt. Reeta Devi w/o Shri Tek Chand, r/o Village Baral, P.O. Baroti, Tehsil Sarkaghat, District Mandi, H.P. before the Executive Engineer, H.P.P.W.D. Division Dharampur, District Mandi, H.P. vide demand notice dated 23.03.2013 regarding her alleged illegal termination of services during October, 1999 suffers from delay and latches? If not, Whether termination of services of Smt. Reeta Devi w/o Shri Tek Chand, r/o Village Baral, P.O. Baroti, Tehsil Sarkaghat, District Mandi, H.P. by the Executive Engineer, H.P.P.W.D. Division Dharampur, District Mandi, H.P. during October, 1999 without complying the provisions of the Industrial Disputes Act, 1947, is legal and justified? If not, what amount of back wages, seniority, past service benefits and compensation the above aggrieved workman is entitled to from the above employer?”

2. On receipt of reference from appropriate government, notices were issued to the parties in pursuance to which claimant/petitioner has filed statement of claim.

3. Brief facts as stipulated in the claim petition revealed that petitioner had been engaged by respondent on daily waged basis on muster roll as beldar w.e.f. December, 1998 where she continued to work upto October, 1999 who had completed 240 days. Averments made in the claim petition further revealed that services of the petitioner had unlawfully terminated by the respondent vide verbal order in the year 1999 without prior permission and one month's notice and retrenchment compensation as envisaged under Section 25-F of the Industrial Disputes Act, 1947 (hereinafter referred to as 'the Act' for brevity). It is alleged that respondent had violated the provisions of Section 25-F of the Act. It further transpires from between 2000 to 2005, respondent/department had terminated the services of more than 2000 daily waged workers who were engaged by the respondent in Dharampur Division from time to time without any purposes. Not only this, the principle of 'Last come First go' was not followed by the respondent as some juniors namely S/Sh. Prabhu Ram (1.8.1998), Shasi Pal (6.4.1999) and Roshani Devi (4.7.1999) have been retained in service whereas the services of petitioner had been dispensed with. The grievance of petitioner further revealed that after termination of services of petitioner so many new hands had been engaged by the respondent/department, the names of persons subsequent Mamta Devi on 6.4.2000, Inder Singh on 1.12.2003, Pradeep Kumar on 23.11.2007, Lekh Raj on 11/2004 and Satya Devi on 27.1.2011 but petitioner had not given any opportunity of reemployment by the respondent

establishing violation of provisions of Section 25-H of the Act. Feeling aggrieved the action of respondent in terminating the services of petitioner she raised industrial dispute vide demand notice dated 20.3.2013 copy of the same was forwarded to Labour Officer, Mandi for further necessary action. It is alleged that Labour Officer, Mandi could not be resolved the dispute and failure report under Section 12(4) of the Industrial Disputes Act was made and the matter was referred to appropriate government i.e. Labour Commissioner who declined to refer the case of petitioner for adjudication. In pursuance to which the petitioner had approached the Hon'ble High Court of H.P. by filing CWP no.3600/2015 which had been decided on 31.8.2015 directed the Labour Commissioner to make reference to the Labour Court. The dispute stated to have been not filed on account of delay and moreover Hon'ble High Court of H.P. has condoned the delay of eight years in case of **Rajneet Singh vs. State of H.P. & Ors.** reported in **2015 (145) FLR 722**. The petitioner alleges that respondent in terminating the services of petitioner w.e.f. 1999 without complying with the necessary provisions of the Industrial Disputes Act, 1947 which was illegal and unjustified and against the mandatory provisions of the Act. Accordingly, prayed has been made to set aside the illegal termination order of petitioner directed the respondent to reinstate the petitioner with full back wages, seniority, continuity in service with all consequential benefits.

4. The respondent contested claim petition, filed reply inter-alia taken preliminary objections of maintainability, delay and laches. On merits admitted that petitioner was engaged as daily wager on 03/1999 and she intermittently worked upto October, 1999. It is alleged that petitioner has left the job of her own who had not completed 240 days in each calendar year. It is alleged that petitioner had left the job of her own sweet will and respondent/department had not violated any provisions of the Industrial Disputes Act. The plea of respondent remained that petitioner had abandoned the job at her own sweet will. It is maintained that petitioner had left the job prior to retrenchment of the other workers in the year February, 2004 and July, 2005 and therefore the question of any illegal act of respondent does not arise. It is also contended by the respondent that there is inordinate delay in raising industrial dispute. It is alleged that petitioner had left the job of her own sweet will who was never terminated by the respondent. Alleges that question of termination of the services of petitioner by the respondent does not arise. Delay in filing the claim petition is stated to be fatal to the case of petitioner and the petitioner raised her claim when other workers raised demand notice and that petitioner was gainfully employed as an agriculturist. Accordingly, petition was sought to be dismissed.

5. The petitioner filed rejoinder, reiterated his stand as maintained in the claim petition.

6. To prove her case, petitioner had examined herself as PW1 tendered/proved her affidavit under Order 18 Rule 4 CPC Ex. PW1/A, Ex. PW1/B copy of RTI information dated 13.11.2013, Ex. PW1/C copy of mandays chart of Sh. Shashi Kant and closed evidence. On the other hand, repudiating the evidence led by the petitioner, respondent examined RW1 Shri Sudhir Mittal, the then Executive Engineer, HPPWD Division Dharampur as RW1 tendered/proved his affidavit Ex. RW1/A, mandays chart of petitioner Ex. RW1/B and closed the evidence.

7. I have heard the ld. Authorized Representative/counsel of petitioner and ld. Dy. D.A. representing respondent, gone through records of the case carefully relevant for disposed of this case.

8. From the contentions raised, following issues were framed on 05.4.2016 for determination:

1. Whether the industrial dispute raised by petitioner vide demand notice dated 20-03-2013 qua her termination of service during October, 1999 by respondent suffers from the vice of delay and laches as alleged? If so, its effect? ...*OPP*.

2. Whether termination of services of the petitioner by the respondent during October, 1999 is/was illegal and unjustified as alleged? ...*OPP*.
17. If issue no.1 or issue no.2 or both are proved in affirmative, to what service benefits the petitioner is entitled to? ...*OPP*.
18. Whether the claim petition is not maintainable in the present form? ...*OPR*.
- Relief.
9. For the reasons detailed here under, my findings on the above issues are as follows:—
- Issue No.1* : Discussed
- Issue No.2* : Yes
- Issue No.3* : Discussed
- Issue No.4* : No
- Relief.* : Petition is partly allowed awarding compensation Rs.25,000/- per operative part of award.

REASONS FOR FINDINGS

ISSUES NO.1 TO 3

10. All these issues have been taken up together for discussion being interconnected which can be disposed of simultaneously without repetition of evidence.

11. It is pertinent to mention here that claim petition before this Court was filed by petitioner in which she has prayed for setting aside the retrenchment order in the year 1999 qua her illegal termination and sought direction to the effect that services of petitioner be treated as continuous service till date with full back wages. It has further been prayed that services of petitioner be regularized after completion of eight years of service on the basis of policy framed by the State Govt. with all consequential benefits. Not only this, petitioner also prayed that her case may also be considered for engagement in service as per policy framed by the State Govt. and to another relief petitioner is entitled.

12. A bare glance at claim petition would reveal that petitioner was appointed as daily wage basis with the respondent w.e.f. December, 1998 on muster roll basis as beldar who continued to work till October, 1999 when her services were terminated without paying any retrenchment compensation under Section 25-F of the Act. It is claimed that petitioner had completed more than 240 days in each calendar prior to her termination and that while retrenching the services of petitioner principle of 'Last come First go' was not followed as Prabhu Ram (1.8.1998), Shasi Pal (6.4.1999), Roshani Devi (4.7.1999), Mamta Devi (6.4.2000), Inder Singh (1.1.2000) and Hans Raj (6.4.2000) were retained in service and thus the provisions of Section 25-G of the Act was not followed by the respondent. Mandays chart Ex. RW1/B on record reveals that petitioner had worked for 08 days in the month of March 1999 and 17 days in the month of October, 1999. Even if we look at the mandays chart, this would show that immediately preceding her termination petitioner has factually worked for 25 days and not 240 days and therefore provisions of Section 25-F of the Act are not applicable and in that situation respondent would not be required to either issue notice envisaged under Section 25-F of the Act or to pay wages in lieu thereof.

13. In so far as plea of abandonment raised by respondent is concerned, the same merits rejection in view of the fact that respondent had failed to produce any record by which it could be established that whenever petitioner absented from his duty, respondent had not issued any notice or letter. On this point respondent as RW1 has specifically admitted that whenever petitioner abandoned the job, no notice had been issued. RW1 specifically admitted that no departmental inquiry was initiated against petitioner even after October, 1999. No reason whatsoever has been assigned for such any action or omission on the part of respondent in not initiating any departmental proceedings or making correspondence calling upon the petitioner to join service. This prima facie belies the stand taken by the respondent as abandonment has to be proved like any other fact in issue. As such, in absence of any specific and reliable evidence led by respondent, it would be unsafe to hold that respondent had established plea of abandonment. Hence, violation of Section 25-F of the Act has not been proved by them petitioner.

14. In so far as violation of provisions of Section 25-G of the Act is concerned, suffice would be to state here that Prabhu Ram (1.8.1998), Shasi Pal (6.4.1999), Roshani Devi (4.7.1999), Mamta Devi (6.4.2000), Inder Singh (1.1.2000) and Hans Raj (6.4.2000) were engaged between 1998 to 2003. In 2004, one Pardeep Kumar s/o Bahadur Singh was appointed on 23.11.2007, Lekh Raj s/o Ram Saran was appointed on 11/2004 and Satya Devi was engaged on 27.1.2011 but no opportunity was given to petitioner for reemployment which violates the provisions of Section 25-H of the Act. Close scrutiny of the petitioner in cross-examination would reveal that principle of 'Last come First go' was not followed for all the workmen appointed in between 1998 to 2004 whereas petitioner had been retrenched in 1999 and thereafter several persons were engaged in service but petitioner has not given any opportunity for reemployment. Since the persons mentioned in para 4 of claim petition as well as affidavit of petitioner Ex. PW1/A had been appointed by 1998 to 1999 provisions of Section 25-G of the Act could not be stated to have been violated. Be it noticed that Pardeep Kumar, Lekh Raj & Satya Devi had been appointed in 2007, 2004 and 2011 respectively. It is pertinent to mention to state here that when persons mentioned in para no. 5 of the claim petition were engaged and petitioner was not given offered for reemployment which manifestly violates the provisions of Section 25-H of the Act. From evidence, it is evidently clear that after termination of petitioner she was available for job who was not appointed however some persons fresh were allowed to join in service. As such, which is clearly violation of Section 25-H of the Act.

15. Ld. counsel for the petitioner has contended with vehemence that petitioner be treated in continuous service for eight years and for said reason the left period after 1999 be treated as regular period. It is not understood as to how petitioner claim this benefit as petitioner never worked for 240 days in any 12 months preceding termination and thus judgment of Hon'ble High Court reported in **2012 (132) FLR 528 (SC)** titled as **H.S. Rajashekara and State Bank of Mysore and another** does not come to the rescue of the petitioner. Since 240 days were never completed in a year by the petitioner, it could not be construed in any manner that termination of petitioner was illegal. Therefore, the entire period cannot be treated in service. As stated above that petitioner remained out of job after her termination but there is nothing authenticated in evidence suggesting that she remained without earning and petitioner as PW1 has nowhere stated that she had opted out for job when terminated from service. As such, it is held that after her termination she was not in government job and cross-examination of PW1 reveals that she had not been paid retrenchment compensation and notice at the time of retrenchment. Since the respondent had failed to prove on record any seniority list by which it would be stated that persons who were junior to petitioner were retained in service whereas petitioner who was senior to persons mentioned and thus respondent had clearly violated Section 25-G of Industrial Disputes Act. In view of ratio of judgment of Hon'ble Apex Court reported in **AIR 2015 SC 1373** titled as **Mackinon Machenize & Company Ltd. vs. Mackinon Employees Union** which mandatorily requires the employer to circulate seniority list as prepared. There is no iota of evidence on record remotely suggesting that

respondent had provided seniority list of daily waged workers. As such, plea of petitioner that she was ignored and new hands were allowed to join is to be accepted. In view of foregoing discussions, respondent is held to have violated the provisions of Section 25-H of the Act whereas the petitioner has failed to prove violation of provisions of Section 25-F and 25-G of the Industrial Disputes Act.

16. Ld. Authorized Representative/counsel for petitioner has placed reliance on judgment of Hon'ble Apex Court reported in **2016 (151) FLR 1039** titled as **Rashtriya Colliery Mazdoor Sangh and Employers in Relation to Management of Kenduahih Colliery of M/S BCCL and Ors.**, in which Hon'ble Apex Court has awarded compensation of Rs.4 lakh to each workman. Similarly, reliance has placed on judgment of Hon'ble High Court of Punjab & Haryana reported in **2014 LLR 967** titled as **Deshsewak Foundry vs. Presiding Officer, Labour Court, Gurdaspur & Ors.**, in which compensation of Rs.5 lakh was awarded. In another judgment of Hon'ble High Court of Rajasthan, Jaipur Bench reported in **2017 (152) FLR 206**, titled as **Youth Co-ordinator, Nehru Yuva Kendra and Labour Court No.2, Jaipur and Anr.** in which compensation of Rs. 2 lakh was granted to the workman who had merely worked for two years. Thus, above said judgments disclosing awarding larger amount of compensation which the claimant/petitioner has prayed for. Ld. Dy. D.A. for State has relied upon judgment of **Assistant Engineer Rajasthan Development Corporation and another vs. Geetam Singh** reported in **2013 (136) FLR 893 (SC)**, in which various criteria to be looked by the Hon'ble Apex Court in awarding compensation. It has been held that before exercising its judicial discretion, the Labour Court has to keep in view all relevant factors including the mode and manner of appointment, nature of employment, length of service, the ground on which termination has been set aside and the delay in raising industrial dispute before grant of relief in an industrial dispute.

17. Since no straight-jacket formula can be applied for determining compensation as it is to be awarded on the basis of facts of case. In **2014 LLR 967** Hon'ble High Court of Punjab & Haryana had awarded compensation of Rs.5 lac to claimant petitioner who was litigating for past 30 years. Similarly, in **2016 (151) FLR 1039** Hon'ble Apex Court awarded compensation to each worker of Rs.4 lacs. It was observed that many of the workmen were at age of retirement and that nearly 27 years had elapsed since the time of retrenchment. Moreover, the workers who were awarded compensation of Rs.4 lac belonged to skilled category of Tyndals. As such, judgment relied upon by ld. counsel/Authorized Representative for petitioner does not apply to present case rather applying the criteria laid down by Hon'ble Apex Court in **Geetam Singh's case 2013 (136) FLR 893 (SC)** has been followed and applied.

18. Ld. counsel representing respondent department has also contended with vehemence that claim petition is barred by limitation on account of delay and laches. It has been pointed that termination of petitioner in this case took place on October, 1999 and the industrial dispute was raised after several years of retrenchment. Repudiating the argument by ld. counsel, ld. AR for the petitioner has placed reliance upon judgment reported in **2007 LHLJ 903 Hon'ble High Court of H.P. (Bhatag Ram's case)** in which it has been held that delay in raising dispute may be considered by court at the time of granting final relief however in various other judgments even longer delay has been condoned. In **Divisional Manager, HPFC & another vs. Garibu Ram, Latest HLJ 2007 (HP) 1160**, delay of more than 10 years was condoned besides Hon'ble High Court has held that principle of Limitation Act is not applicable to the industrial dispute. Similar view was taken by Hon'ble Apex Court in **Ajayab Singh vs. Sirhind Co-operative Marketing-cum- Processing Society Limited and Another, (1999) 6 SCC 82** in which it has been held that the principle of Limitation Act, 1963 did not apply to the proceeding under the Industrial Disputes Act.

19. Applying the ratio of judgment above stated and that petitioner had rendered service only for **two months** who was female non-skilled worker ageing 50 years when her services were terminated and not likely to get government job at this age and had worked for 25 days when she was about to complete 240 days entitling her protection under Section 25-F of Industrial Disputes Act and demand notice was issued after a period of 14 years by the petitioner, a lump-sum compensation of Rs.25,000/- (Rupees twenty five thousand only) would be a appropriate relief to the petitioner in lieu of back wages, seniority, past service benefits as well as other consequential service benefits. It is further made clear that amount of compensation shall be paid within four months from the date of Award failing which the petitioner would be entitled for interest @ 9% per annum from date of Award till its realization. Issues no. 1, 2 and 3 are answered accordingly.

ISSUE NO.4

20. On the plea of non-maintainability of the claim petition under Section 10 of the Industrial Disputes Act, Id. Dy. D.A. representing respondent department has failed to allege in reply in what manner petition is not maintainable. Thus, vague plea merits rejection outright. Otherwise also, from pleadings and evidence on record, no inference of claim petition being not maintainable could be raised against claimant/petitioner. This issue is decided in favour of petitioner and against the respondent.

RELIEF

21. As sequel to my findings on foregoing issues, the respondent is hereby directed to pay the compensation of Rs.25,000/- (Rupees twenty five thousand only) to the petitioner in lieu of the back wages, seniority, past service benefits as well as the other consequential service benefits. Amount of compensation so awarded shall be paid by the respondent to the petitioner within four months from today failing which the respondent shall be liable to pay the interest @ 9% per annum on the said amount from the date of award till the date of its realization. In the peculiar circumstances of the case, the parties are left to bear their own costs.

22. The reference is answered in the aforesaid terms.

23. A copy of this Award be sent to the appropriate Government for publication in the official gazette.

24. File, after due completion be consigned to the Record Room.

Announced in the open Court today this 28th day of February, 2017.

(K.K. SHARMA),
Presiding Judge,
Labour Court-cum-Industrial Tribunal,
Kangra at Dharamshala, H.P.

**IN THE COURT OF K. K. SHARMA, PRESIDING JUDGE, LABOUR COURT-CUM-
INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA (HP)**

Ref No. : 585/2015

Date of Institution : 19.12.2015

Date of Decision : 28.02.2017

Smt. Nirmla Devi w/o Shri Ramesh Chand, r/o Village Satrehar, P.O. Dharampur, Tehsil Sarkaghat, District Mandi, H.P.*Petitioner.*

Versus

Executive Engineer, H.P.P.W.D. Division, Dharampur, Tehsil Sarkaghat, District Mandi, H.P.*Respondent.*

Reference under Section 10 (1) of the Industrial Disputes Act, 1947.

For the Petitioner : Sh. N.L. Kaundal, AR
: Sh. Vijay Kaundal, Adv.

For the Respondent : Sh. Sanjeev Singh Rana, Dy. D.A.

AWARD

The reference given below has been received from the appropriate Government for adjudication:

“Whether the industrial dispute raised by the worker Smt. Nirmla Devi w/o Shri Ramesh Chand, r/o Village Satrehar, P.O. Dharampur, Tehsil Sarkaghat, District Mandi, H.P. before the Executive Engineer, H.P.P.W.D. Division Dharampur, District Mandi, H.P. vide demand notice dated 21.01.2014 regarding her alleged illegal termination of services w.e.f. 01.09.1999 suffers from delay and latches? If not, Whether termination of services of Smt. Nirmla Devi w/o Shri Ramesh Chand, r/o Village Satrehar, P.O. Dharampur, Tehsil Sarkaghat, District Mandi, H.P. by the Executive Engineer, H.P.P.W.D. Division Dharampur, District Mandi, H.P. w.e.f. 01.10.1999 without complying the provisions of the Industrial Disputes Act, 1947, is legal and justified? If not, what amount of back wages, seniority, past service benefits and compensation the above aggrieved workman is entitled to from the above employer?”

2. On receipt of reference from appropriate government, notices were issued to the parties in pursuance to which claimant/petitioner has filed statement of claim.

3. Brief facts as stipulated in the claim petition revealed that petitioner had been engaged by respondent on daily waged basis on muster roll as beldar w.e.f. November, 1998 where she continued to work upto 30.9.1999 who had completed 240 days. Averments made in the claim petition further revealed that services of the petitioner had unlawfully terminated by the respondent vide verbal order in the year 1999 without prior permission and one month's notice and retrenchment compensation as envisaged under Section 25-F of the Industrial Disputes Act, 1947 (hereinafter referred to as 'the Act' for brevity). It is alleged that respondent had violated the provisions of Section 25-F of the Act. It further transpires from between 2000 to 2005, respondent/department had terminated the services of more than 2000 daily waged workers who were engaged by the respondent in Dharampur Division from time to time without any purposes. Not only this, the principle of 'Last come First go' was not followed by the respondent as some juniors namely S/Sh. Prabhu Ram (1.8.1998), Shasi Pal (6.4.1999) and Roshani Devi (4.7.1999) have been retained in service whereas the services of petitioner had been dispensed with. The grievance of petitioner further revealed that after termination of services of petitioner so many new hands had been engaged by the respondent/department, the names of persons subsequent Mamta Devi on 6.4.2000, Inder Singh on 1.12.2003, Pradeep Kumar on 23.11.2007, Lekh Raj on 11/2004 and Satya Devi on 27.1.2011 but petitioner had not given any opportunity of reemployment by the respondent

establishing violation of provisions of Section 25-H of the Act. Feeling aggrieved the action of respondent in terminating the services of petitioner she raised industrial dispute vide demand notice dated 21.1.2014 copy of the same was forwarded to Labour Officer, Mandi for further necessary action. It is alleged that Labour Officer, Mandi could not be resolved the dispute and failure report under Section 12(4) of the Industrial Disputes Act was made and the matter was referred to appropriate government i.e. Labour Commissioner who declined to refer the case of petitioner for adjudication. In pursuance to which the petitioner had approached the Hon'ble High Court of H.P. by filing CWP no.3604/2015 which had been decided on 1.9.2015 directed the Labour Commissioner to make reference to the Labour Court. The dispute stated to have been not filed on account of delay and moreover Hon'ble High Court of H.P. has condoned the delay of eight years in case of **Rajneet Singh vs. State of H.P. & Ors.** reported in **2015 (145) FLR 722**. The petitioner alleges that respondent in terminating the services of petitioner w.e.f. 1.10.1999 without complying with the necessary provisions of the Industrial Disputes Act, 1947 which was illegal and unjustified and against the mandatory provisions of the Act. Accordingly, prayed has been made to set aside the illegal termination order of petitioner directed the respondent to reinstate the petitioner with full back wages, seniority, continuity in service with all consequential benefits.

4. The respondent contested claim petition, filed reply inter-alia taken preliminary objections of maintainability, delay and laches. On merits admitted that petitioner was engaged as daily wager on 11/1998 and she intermittently worked upto September, 1999. It is alleged that petitioner has left the job of her own who had not completed 240 days in each calendar year. It is alleged that petitioner had left the job of her own sweet will and respondent/department had not violated any provisions of the Industrial Disputes Act. The plea of respondent remained that petitioner had abandoned the job at her own sweet will. It is maintained that petitioner had left the job prior to retrenchment of the other workers in the year February, 2004 and July, 2005 and therefore the question of any illegal act of respondent does not arise. It is also contended by the respondent that there is inordinate delay in raising industrial dispute. It is alleged that petitioner had left the job of her own sweet will who was never terminated by the respondent. Alleges that question of termination of the services of petitioner by the respondent does not arise. Delay in filing the claim petition is stated to be fatal to the case of petitioner and the petitioner raised her claim when other workers raised demand notice and that petitioner was gainfully employed as an agriculturist. Accordingly, petition was sought to be dismissed.

5. The petitioner filed rejoinder, reiterated his stand as maintained in the claim petition.

6. To prove her case, petitioner had examined herself as PW1 tendered/proved her affidavit under Order 18 Rule 4 CPC Ex. PW1/A, Ex. PW1/B copy of RTI information dated 13.11.2013, Ex. PW1/C copy of mandays chart of Sh. Shashi Kant. Smt. Neelam Kumari, Clerk in the office of The E.E. HPPWD Hamirpur examined as PW2 tendered/proved Ex. P1 copy of regular appointment order of Sanjay Kumar and mandays chart of Ex. P2 and closed evidence. On the other hand, repudiating the evidence led by the petitioner, respondent examined RW1 Shri Sudhir Mittal, the then Executive Engineer, HPPWD Division Dharampur as RW1 tendered/proved his affidavit Ex. RW1/A, mandays chart of petitioner Ex. RW1/B and closed the evidence.

7. I have heard the Id. Authorized Representative/counsel of petitioner and Id. Dy. D.A. representing respondent, gone through records of the case carefully relevant for disposed of this case.

8. From the contentions raised, following issues were framed on 05.10.2016 for determination:

1. Whether the industrial dispute raised by petitioner vide demand notice dated 21-01-2014 qua her termination of service w.e.f.01-10-1999 by respondent suffers from the vice of delay and laches as alleged? If so, its effect? ...*OPP*.
2. Whether termination of services of the petitioner by the respondent w.e.f. 01-10-1999 is/was illegal and unjustified as alleged? ...*OPP*.
19. If issue no.1 or issue no.2 or both are proved in affirmative, to what service benefits the petitioner is entitled to? ...*OPP*.
20. Whether the claim petition is not maintainable in the present form? ...*OPR*.

Relief.

9. For the reasons detailed here under, my findings on the above issues are as follows:—

Issue No.1 : Discussed

Issue No.2 : Yes

Issue No.3 : Discussed

Issue No.4 : No

Relief. : Petition is partly allowed awarding compensation Rs.1,00,000/- per operative part of award.

REASONS FOR FINDINGS

ISSUES NO.1 TO 3

10. All these issues have been taken up together for discussion being interconnected which can be disposed of simultaneously without repetition of evidence.

11. It is pertinent to mention here that claim petition before this Court was filed by petitioner in which she has prayed for setting aside the retrenchment order in the year 1999 qua her illegal termination and sought direction to the effect that services of petitioner be treated as continuous service till date with full back wages. It has further been prayed that services of petitioner be regularized after completion of eight years of service on the basis of policy framed by the State Govt. with all consequential benefits. Not only this, petitioner also prayed that her case may also be considered for engagement in service as per policy framed by the State Govt. and to another relief petitioner is entitled.

12. A bare glance at claim petition would reveal that petitioner was appointed as daily wage basis with the respondent w.e.f. November, 1998 on muster roll basis as beldar who continued to work till September, 1999 when her services were terminated without paying any retrenchment compensation under Section 25-F of the Act. It is claimed that petitioner had completed more than 240 days in each calendar prior to her termination and that while retrenching the services of petitioner principle of 'Last come First go' was not followed as Prabhu Ram (1.8.1998), Shasi Pal (6.4.1999), Roshani Devi (4.7.1999), Mamta Devi (6.4.2000), Inder Singh (1.1.2000) and Hans Raj (6.4.2000) were retained in service and thus the provisions of Section 25-G of the Act was not followed by the respondent. Mandays chart Ex. RW1/B on record reveals that petitioner had worked for 18 days in the month of November, 1998, 31 days in December, 1998, 31 days in January, 1999, 21 days in February, 1999, 29 days in March, 1999, 15 days in April, 1999, 20 days in May, 1999, 29 days in July, 1999, 30 days in August, 1999 and 30 days in September, 1999. Even if we look at the mandays chart, this would show that immediately

preceding his termination petitioner has factually worked for more than 240 days and therefore provisions of Section 25-F of the Act is applicable and in that situation respondent would be required to either issue notice envisaged under Section 25-F of the Act or to pay wages in lieu thereof but the same was not done by the respondent. A bare glance at the mandays chart Ex. RW1/B would reveal that petitioner had worked for more than 240 days immediately prior to her retrenchment but she was not issued any notice required to be given before retrenchment.

13. In so far as plea of abandonment raised by respondent is concerned, the same merits rejection in view of the fact that respondent had failed to produce any record by which it could be established that whenever petitioner absented from his duty, respondent had not issued any notice or letter. On this point respondent as RW1 has specifically admitted that whenever petitioner abandoned the job, no notice had been issued. RW1 specifically admitted that no departmental inquiry was initiated against petitioner even after September, 1999. No reason whatsoever has been assigned for such any action or omission on the part of respondent in not initiating any departmental proceedings or making correspondence calling upon the petitioner to join service. This prima facie belies the stand taken by the respondent as abandonment has to be proved like any other fact in issue. As such, in absence of any specific and reliable evidence led by respondent, it would be unsafe to hold that respondent had established plea of abandonment. In view of foregoing, violation of Section 25-F of the Act is held to have been proved by the petitioner.

14. In so far as violation of provisions of Section 25-G of the Act is concerned, suffice would be to state here that Prabhu Ram (1.8.1998), Shashi Pal (6.4.1999), Roshani Devi (4.7.1999), Mamta Devi (6.4.2000), Inder Singh (1.1.2000) and Hans Raj (6.4.2000) were engaged between 1998 to 2003. In 2004, one Pardeep Kumar s/o Bahadur Singh was appointed on 23.11.2007, Lekh Raj s/o Ram Saran was appointed on 11/2004 and Satya Devi was engaged on 27.1.2011 but no opportunity was given to petitioner for reemployment which violates the provisions of Section 25-H of the Act. Close scrutiny of the petitioner in cross-examination would reveal that principle of 'Last come First go' was not followed for all the workmen appointed in between 1998 to 2004 whereas petitioner had been retrenched in 1999 and thereafter several persons were engaged in service but petitioner has not given any opportunity for reemployment. Since the persons mentioned in para 4 of claim petition as well as affidavit of petitioner Ex. PW1/A had been appointed by 1998 to 1999 provisions of Section 25-G of the Act could not be stated to have been violated. Be it noticed that Pardeep Kumar, Lekh Raj & Satya Devi had been appointed in 2007, 2004 and 2011 respectively. It is pertinent to mention to state here that when persons mentioned in para no. 5 of the claim petition were engaged and petitioner was not given offered for reemployment which manifestly violates the provisions of Section 25-H of the Act. From evidence, it is evidently clear that after termination of petitioner she was available for job who was not appointed however some persons fresh were allowed to join in service. As such, which is clearly violation of Section 25-H of the Act.

15. Ld. counsel for the petitioner has contended with vehemence that petitioner be treated in continuous service for eight years and for said reason the left period after October, 1999 be treated as regular period. It is not understood as to how petitioner claim this benefit as petitioner never worked with the respondent/department after his termination as well as there is no adequate evidence on record suggesting that petitioner had represented the respondent/department after her termination, although petitioner had issued demand notice i.e. 21.1.2014 after about 14 years and thus judgment of Hon'ble High Court reported in **2012 (132) FLR 528 (SC)** titled as **H.S. Rajashekara and State Bank of Mysore and another** does not come to the rescue of the petitioner. Therefore, the entire period cannot be treated in service. As stated above that petitioner remained out of job after her termination but there is nothing authenticated in evidence suggesting that she remained without earning and petitioner as PW1 has nowhere stated that she had opted out for job when terminated from service. As such, it is held that after her termination she was not in

government job and cross-examination of PW1 reveals that she had not been paid retrenchment compensation and notice at the time of retrenchment. Since the respondent had failed to prove on record any seniority list by which it would be stated that persons who were junior to petitioner were retained in service whereas petitioner who was senior to persons mentioned and thus respondent had clearly violated Section 25-G of Industrial Disputes Act. In view of ratio of judgment of Hon'ble Apex Court reported in **AIR 2015 SC 1373** titled as **Mackinon Machenize & Company Ltd. vs. Mackinon Employees Union** which mandatorily requires the employer to circulate seniority list as prepared. There is no iota of evidence on record remotely suggesting that respondent had provided seniority list of daily waged workers. As such, plea of petitioner that she was ignored and new hands were allowed to join is to be accepted. In view of foregoing discussions, respondent is held to have violated the provisions of Section 25-H of the Act whereas the petitioner has failed to prove violation of provisions of Section 25- F and 25-G of the Industrial Disputes Act.

16. Ld. Authorized Representative/counsel for petitioner has placed reliance of judgment of Hon'ble Apex Court reported in **2016 (151) FLR 1039** titled as **Rashtriya Colliery Mazdoor Sangh and Employers in Relation to Management of Kenduahih Colliery of M/S BCCL and Ors.**, in which Hon'ble Apex Court has awarded compensation of Rs.4 lakh to each workman. Similarly, reliance has placed on judgment of Hon'ble High Court of Punjab & Haryana reported in **2014 LLR 967** titled as **Deshsewak Foundry vs. Presiding Officer, Labour Court, Gurdaspur & Ors.**, in which compensation of Rs.5 lakh was awarded. In another judgment of Hon'ble High Court of Rajasthan, Jaipur Bench reported in **2017 (152) FLR 206**, titled as **Youth Co-ordinator, Nehru Yuva Kendra and Labour Court No.2, Jaipur and Anr.** in which compensation of Rs.2 lakh was granted to the workman who had merely worked for two years. Thus, above said judgments disclosing awarding larger amount of compensation which the claimant/petitioner has prayed for. Ld. Dy. D.A. for State has relied upon judgment of **Assistant Engineer Rajasthan Development Corporation and another vs. Geetam Singh** reported in **2013 (136) FLR 893 (SC)**, in which various criteria to be looked by the Hon'ble Apex Court in awarding compensation. It has been held that before exercising its judicial discretion, the Labour Court has to keep in view all relevant factors including the mode and manner of appointment, nature of employment, length of service, the ground on which termination has been set aside and the delay in raising industrial dispute before grant of relief in an industrial dispute.

17. Since no straight-jacket formula can be applied for determining compensation as it is to be awarded on the basis of facts of case. In **2014 LLR 967** Hon'ble High Court of Punjab & Haryana had awarded compensation of Rs.5 lac to claimant petitioner who was litigating for past 30 years. Similarly, in **2016 (151) FLR 1039** Hon'ble Apex Court awarded compensation to each worker of Rs.4 lacs. It was observed that many of the workmen were at age of retirement and that nearly 27 years had elapsed since the time of retrenchment. Moreover, the workers who were awarded compensation of Rs.4 lac belonged to skilled category of Tyndals. As such, judgment relied upon by ld. counsel/Authorized Representative for petitioner does not apply to present case rather applying the criteria laid down by Hon'ble Apex Court in **Geetam Singh's case 2013 (136) FLR 893 (SC)** has been followed and applied.

18. Ld. counsel representing respondent department has also contended with vehemence that claim petition is barred by limitation on account of delay and laches. It has been pointed that termination of petitioner in this case took place on June, 1999 and the industrial dispute was raised after several years of retrenchment. Repudiating the argument by ld. counsel, ld. AR for the petitioner has placed reliance upon judgment reported in **2007 LHLJ 903 Hon'ble High Court of H.P. (Bhatag Ram's case)** in which it has been held that delay in raising dispute may be considered by court at the time of granting final relief however in various other judgments even longer delay has been condoned. In **Divisional Manager, HPFC & another vs. Garibu Ram,**

Latest HLJ 2007 (HP) 1160, delay of more than 10 years was condoned besides Hon^{ble} High Court has held that principle of Limitation Act is not applicable to the industrial dispute. Similar view was taken by Hon^{ble} Apex Court in **Ajayab Singh vs. Sirhind Co-operative Marketing-cum-Processing Society Limited and Another, (1999) 6 SCC 82** in which it has been held that the principle of Limitation Act, 1963 did not apply to the proceeding under the Industrial Disputes Act.

19. Applying the ratio of judgment above stated and that petitioner had rendered service only for **six months** who was female non-skilled worker ageing 42 years when her services were illegally terminated without notice and not likely to get government job at this age and had factually worked for 254 days when she had already completed 240 days entitling her protection under Section 25-F of Industrial Disputes Act however demand notice was issued after a period of 14 years by the petitioner, a lump-sum compensation of Rs.1,00,000/- (Rupees one lakh only) would be a appropriate relief to the petitioner in lieu of back wages, seniority, past service benefits as well as other consequential service benefits. It is further made clear that amount of compensation shall be paid within four months from the date of Award failing which the petitioner would be entitled for interest @ 9% per annum from date of Award till its realization. Issues no. 1, 2 and 3 are answered accordingly.

ISSUE NO. 4

20. On the plea of non-maintainability of the claim petition under Section 10 of the Industrial Disputes Act, Id. Dy. D.A. representing respondent department has failed to allege in reply in what manner petition is not maintainable. Thus, vague plea merits rejection outright. Otherwise also, from pleadings and evidence on record, no inference of claim petition being not maintainable could be raised against claimant/petitioner. This issue is decided in favour of petitioner and against the respondent.

RELIEF

21. As sequel to my findings on foregoing issues, the respondent is hereby directed to pay the compensation of Rs.1,00,000/- (Rupees one lakh only) to the petitioner in lieu of the back wages, seniority, past service benefits as well as the other consequential service benefits. Amount of compensation so awarded shall be paid by the respondent to the petitioner within four months from today failing which the respondent shall be liable to pay the interest @ 9% per annum on the said amount from the date of award till the date of its realization. In the peculiar circumstances of the case, the parties are left to bear their own costs.

22. The reference is answered in the aforesaid terms.

23. A copy of this Award be sent to the appropriate Government for publication in the official gazette.

24. File, after due completion be consigned to the Record Room.

Announced in the open Court today this 28th day of February, 2017.

(K. K. SHARMA),
Presiding Judge,
Labour Court-cum-Industrial Tribunal,
Kangra at Dharamshala, H.P.

**The Court of Shri Hemis Negi, H.A.S., Sub Divisional Magistrate Shimla (Urban),
District Shimla, Himachal Pradesh**

Timru Oraon s/o Shri Mangra Oraon C/o P. K. Sood, Inder Bhawan, Paras Dass Garden
Kanlog, Shimla, Tehsil and District Shimla-110017 .. *Applicant.*

Versus

General Public

.. *Respondent.*

Application under section 13(3) of Birth and Death Registration Act, 1969.

Whereas Timru Oraon s/o Shri Mangra Oraon C/o P. K. Sood, Inder Bhawan, Paras Dass Garden Kanlog, Shimla, Tehsil and District Shimla has preferred an application to the undersigned for registration of date of his daughter namely Anuj Kumari (DOB 14-11-2004) in the record of Municipal Corporation, Shimla.

Therefore, this proclamation, the General Public is hereby informed that any person having and objection for entry as to date of birth mentioned above, may submit his objection in writing in this court on or before 19-06-2017 failing which no objection will be entertained after expiry of date and will be decided accordingly.

Given under my hand and seal of the Court on this 19th day of May, 2017.

Seal.

HEMIS NEGI,
*Sub-Divisional Magistrate,
Shimla (Urban).*

**The Court of Shri Hemis Negi, H.A.S., Sub Divisional Magistrate Shimla (Urban),
District Shimla, Himachal Pradesh**

Avnish Malhotra s/o Shri Kashmiri Lal Malhotra, r/o Malhotra Cottage, Dhingu Mandir
Road Sanjauli, Shimla, Tehsil and District Shimla H.P. .. *Applicant.*

Versus

General Public

.. *Respondent.*

Application under section 13(3) of Birth and Death Registration Act, 1969.

Whereas Avnish Malhotra s/o Shri Kashmiri Lal Malhotra, r/o Malhotra Cottage, Dhingu Mandir Road Sanjauli, Shimla, Tehsil and District Shimla, H.P. has preferred an application to the undersigned for registration of his date of birth *i. e.* (DOB 19-03-1973) in the record of Municipal Corporation, Shimla.

Therefore, this proclamation, the General Public is hereby informed that any person having and objection for entry as to date of birth mentioned above, may submit his objection in writing in this court on or before 19-06-2017 failing which no objection will be entertained after expiry of date and will be decided accordingly.

Given under my hand and seal of the Court on this 19th day of March, 2017.

Seal.

HEMIS NEGI,
Sub-Divisional Magistrate,
Shimla (Urban).